LITTLETONS TENVRES IN ENGLISH,

Liber Tho: Forsbrok

Lately perused and amended.

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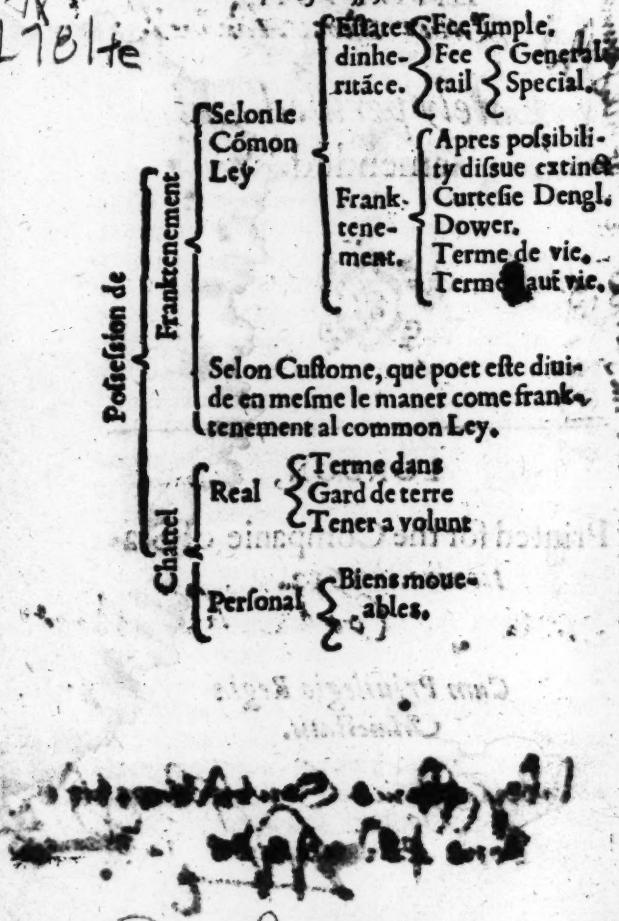

Rec. Dec. 1, 1914

liber Thome Forbecke ex dono Thome Southworth.

Fee simple. Fol. 2

TEnaunt in fée simple is he which hath Lands or Tenements to hold to him and to his heires for euer: and it is called in Latin Feodum simplex: for Feodum is called inheritaunce, and Simplex is as much to say, as lawful or pure, and so Feodum simplex, is as much to say, as lawfull or pure inheritaunce: For if a man will purchase lands or tenements in fée simple, it behoueth him to haue these wordes in his purchase, To haue and to hold vnto him and to his heires: for these wordes (his heires) make the estate of inheritance, Anno 10. Henrici 6. fol. 38, for if any man purchase land by these wordes: To haue and to hold to him for euer: or by such wordes, To haue and to hold to him and to his assignes for euer, In these two cases hee hath none estate but for terme of lyfe, for that that hee lacketh these wordes (his heires,) which wordes onely make the estate of inheritaunce in all feoffements and graunts.

And if a man purchase lands in fée simple, & die without issue, euery one that is his next cosin collaterall, of the whole blood, how far soeuer that he be from him of degree, may inherit & haue the same lād as heire vnto him. But if there be father & son, & the father hath a brother which is vncle vnto the son, & the son purchaseth lād in fée simple, & dieth without issue liuing ye father, the vncle shal haue the land, as

heire vnto the sonne, and not to the father (yet the father is more nigh of bloud vnto the son) for that that there is a ground in the law, that inheritance may lineally descend, but not lineally ascend: yet if the son in such case die without issue, & his vncle entreth into the land as heire vnto the son (so as he ought by the law) and after if the vncle decease without issue lyuing the father, then shall the father haue the lād as heire vnto the vncle, & not as heire vnto the son, for that that he commeth vnto the land by collaterall discent, & not by lineal ascention.

father through the uncle

3 And in such case where the son purchaseth land in fee simple, and dieth without issue, they of his bloud on the fathers side shall inherite as heire vnto him, before any of the bloud of the mothers side. But if he haue no heire on the fathers side, then shall the land descend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12 E. 4. fol. 35. But there it was holden if any land descend vnto a man by the fathers side which dieth without issue, that his next heire on the fathers side shall inherit vnto him, that is to say, the next of bloud of the father of the graundfathers side. And for default of such an heire, they that be of the fathers bloud of the part of the mother of the father, (that is to say) the graundmother ought to inherite. And if there bee no such heire on the fathers side, then the Lord shall haue the land by Escheate. And so it is if a mā take a wife inheritor in fee simple,

fathers bloud before mothers

* Not in Cotes Edition

which

Before Sylvestris got into as much reputation several editions were published wh great additions or rather corrections than looked when as improvements.

which hath iſſue a ſonne and dyeth, and the ſonne entreth into the tenements as ſonne & heire vnto his mother, and after dyeth without iſſue, the heires on the mothers ſide ought to inherite the tenements, and not the heires on the fathers ſide.

¶ And if there be no heires on the mothers ſide, then the Lord of whom the ſame land is holden ſhall haue the ſame land by eſcheat. In the ſame manner it is if Lands deſcend vnto the ſonne on the fathers ſide, which entreth, & after dyeth without iſſue, the land ſhal deſcend vnto the heires on the fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the Lord of whom the land is holden, ſhal haue the ſame land by eſcheat. And ſo ye may ſee the diuerſitie, where the ſonne purchaſeth Lands in fee ſimple, and where hee commeth vnto thoſe lands or tenements by deſcent on the fathers ſide, or on the mothers ſide.

¶ Alſo if there be three brethren, & the middle brother purchaſeth lād in fee ſimple and dyeth without iſſue, the elder brother ſhal haue the land by deſcent & not the ponger. Alſo if there be three brethrē, and the pongeſt brother purchaſeth land in fee ſimple and dyeth without iſſue, the elder brother ſhall haue the land by deſcent, & not the middle brother, for that that the elder brother is more worthy of blood.

¶ And it is to be vnderſtand, that no man ſhal haue land in fee ſimple by deſcēt as heire vnto

any man, vnlesse hee be his heire of the whole bloud. For if a man haue issue two sonnes by two venters, and the elder purchaseth land in fee simple and dieth without issue, the yonger brother shall not haue the land, but the vncle of the elder brother, or some other his nigh cosin shall haue it, for that that the yonger is but of the halfe bloud to the elder brother. And if a man haue a sonne and a daughter by one venter, and a sonne by another venter, & the sonne by the first venter purchaseth Land in fee simple and dieth without issue, the sister shal haue the Land by discent as heire vnto her brother, and not the yonger brother, for that that the sister is of the whole blood to her elder brother.

half blood cannot inherit but rather the whole sister or uncle -

7 And also where a man is seised of land in fee simple, and he hath issue a son and a daughter by one venter, and a sonne by another venter and dyeth, and the elder son entreth, and dyeth without issue, the daughter shall haue the land and not the yonger sonne, and yet is the yonger son heire vnto his father, but not vnto his brother. But if the elder sonne enter not into the land after the death of his father, but dieth before entrie be made by him, then the yonger brother may enter and haue the land as heire vnto his father. But where the elder sonne in the case aforesaid, entreth after the death of his father, and thereof haue possession, then the sister shal haue the land: Quia possessio fratris de feodo simplici, facit sororem esse hæred', For the possession of the brother in fee simple

But a younger half brother may inherit of his father if the elder does not enter after his fathers & before his own death.

ple maketh the sister to be heire.

8 But if there be two brethrē by diuers venters, and the elder is seised in fée simple and dieth without issue, and his vncle entreth as heire vnto him, which also dieth without issue, thē the yonger brother may haue the land as heire vnto his vncle', because he is of the whole bloud to him, though he be but of halfe bloud vnto his elder brother.

9. And it is to be vnderstood that this word (Inheritaunce) is not onely vnderstood where a man hath lands or tenements by descent of heritage: But also euery fée simple or fée tail that a man hath by his purchase, may be sayd inheritance, for that that his heires may inherite them. For in a writ of Right that a man bringeth of land, that was of his owne purchase, the writ shall say, Quam clamat esse ius & hæreditatem suam, that is to say, which he claimeth to be his right & his inheritance. And so it shall be said in diuers other writs which a man or a woman bringeth of their own purchase, as it appeareth by ẏ Register.

10. And of such things as a man may haue a manuell occupation, possession, or receite, as of lands, tenements, rents, and such other, a man shall say in his pleading, and way of barre, that one such was seised in his demesne as of fee. But of such things as lye not in manuel occupation &c. as of Aduowson of a Church, and such maner things: there he shall say, that he was seised as of fée, and not in his

demesne as of fee. And in Latin it is in ye same case said, Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, that such a one was seised in his demesne as of fee, and in the other, Quod talis fuit seisitus vt de feodo, that is to say, that one such was seised as of fee.

11 And note well that a man may not haue a more large ne greater estate of inheritaunce, then fée simple.

12 Also, purchase is called ye possessiō of lands or tenements that a man hath by his deede or by his agréement, vnto which possession he cōmeth, not by discent of any of his ancestors, or of his cosins, but by his owne déed.

Fee taile.

13 TEnant in fee tail, is by force of a statute of Westminster the second, capitulo primo: For at the cōmon law before the said statute, all inheritances were fée simple. For all the gifts which bin specified within the sayd statute, where fée simple cōditionally, as it appeareth by the rehearsall of the statute. And now by the same statute tenant in the taile is said in two manners, that is to say, tenant in taile generall, and tenant in taile speciall.

Tenant in tail. General. - 14 Tenant in taile generall, is where Lands or Tenements be giuen to a man and to his heires of his body begotten: In this case it is said generall taile, for that that whatsoeuer woman that the tenant taketh to wife, if hee haue many wiues, and by each of them hath issue,

ſſue, yet each one of theſe ſſues by poſſibilitie may inherite the tenements by force of the ſaid gift, becauſe that euery ſuch ſſue is of his body ingendred.

15 In the ſame maner it is where lands & tenements be giuen to a woman & to the heires comming out of her bodie, howbeit that ſhee haue many husbands, yet the ſſue ſhe may haue by each husband, may inherite as ſſue in the taile, by force of ſuch gifts. And therefore ſuch gifts beene called generall taile.

16 Tenant in taile ſpeciall, is where Lands and Tenements be giuen vnto a man and his wife and the heires of their two bodies begotten. In ſuch caſe none may inherite by force of ſuch gift, but thoſe that be ingendred betweene them two, & it is called eſpeciall taile, for that if the wife dye and hee taketh another wife and hath ſſue, the ſſue of the ſecond wife, ſhall neuer inherite by force of ſuch gift: Nor alſo the ſſue of the ſecond husband if the firſt husband die.

17 In the ſame maner it is, where lands and tenements bee giuen by a man vnto another with a wife, which is the daughter or coſin to the giuer, in Frankmariage, which gift hath inheritance by theſe words (Frankmariage) vnto it annexed, howbeit that it bee not expreſſly ſaid or rehearſed in the gift, that is to ſay, that theſe Donees ſhall haue theſe Lands or Tenements to them and to their heirs betweene them two ingendred, and this

is

is sayd especiall tayle for that the issue of the second wife may not inherit.

And note well, that this word Talliare, is to say, to set vnto some certaintie, or els limit vnto some certaine inheritance: And for that that it is limited & set in certaine, what issue shall inherite by force of such giftes, and how long that the inheritance shall indure: Therefore it is called in Latin, Feodum talliatum, i. hæreditas in quãdam certitudinẽ limitata. For if tenant in generall taile die without issue, the donor or his heires shall enter as in their reuersion: In the same wise it is of the tenaunt in the taile speciall &c. For in euery gift of the taile without more saying, the reuersion of fee simple is in the donour.

And the donées and their heires shall doe to the donour and to his heires such seruices as the donour doth vnto the Lord next aboue: Except the donées in frankemariage, which shall hold quietly from euery manner seruice, (vnlesse it be for Fealtie) vntill the fourth degrée be past. And after that the fourth degrée is past, the issue in the fift degrée, and so forth the other issues after him, shall hold of the donour & of his heires as they hold ouer, as is aforesaid.

And the degrées in franke mariage shall bée accompted in such manner, that is to say, from the donour to the donées in frankmariage the first degree, for that that the wife, that is one of the donées, ought to be daughter, sister, or other

other colin to the donor: And from the donees vnto their issue shall bee accompted the second degree: And from their issue vnto their issue, the third degree, and so forth &c.

And the cause is, for that after euerie such gift, the issues that come of the donor, and the issues that come of the donees after the fourth degree past of both parties in such fourme to be accompted, may betwixt them by the Law of holy Church intermarrie. And that the donee in frankmariage shall be the first degree of the foure degrees, a man may see in a plea vpon a writ of Right of ward, Anno 31. Edwardi 3. where the plaintife pleadeth that his ayel or Grandfather was seised of certaine Lands &c. And that he held of another by Knights service &c. which gaue the land vnto one Raufe Holland with his sister in frankmariage &c. And also these tailes beforesayd, be specified in the sayd statute of Westminster the second.

And there bee diuers other estates in the tayle, howbeit that they bee not specified by expresse wordes in the said Estatute, but they be taken by the equitie of the Statute: As if Lands be giuen vnto a man and to his heires males of his bodie engendred, in such case his heire male shall inherite, and the issue female shall neuer inherite: yet in these other tailes aforesaid it is otherwise. In the same manner it is if Lands be giuen to a man and to his heires females of his bodie ingendred.

In

In this case his issue females shall inherite by force and forme of the said gift, and not the issue male, for that in such cases where the gift is who ought to inherite, and who not, the will of the donour shalbe obserued.

And in case where Lands be giuen vnto a man & to his heires males issuing of his body, and hee hath issue two sonnes & deceaseth, the elder sonne entreth as heire male, & hath issue a daughter and deceaseth, his brother shall haue the Land and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which been specified in the said statute, the daughter shall inherite before the brother.

And if Lands be giuen vnto a man, and to his heires males of his body ingendred, and hee hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donee deceaseth: in this case the sonne of the daughter shall not inherit by force of the taile, for that, whosoeuer shall inherite by force of a gift in the tayle made vnto the heires males, behoueth to conuey his descent alway to the males, Mich. decimo octauo Edwardi tertij fol. 25. But in such case the donor shall enter, for that the donée is dead without issue male in the law. In somuch that the issue of the daughter may not conuey to him the descent by heire male. And in the same maner it is where lands be giuen to a man and to his wife and to his heires males

males of their two bodies ingendzed.

Also, if Tenements be giuen to a man, and his wife, and to the heires of the body of the man ingendzed, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands be giuen to the husband and to the wife, and to the heires of the husband which hee ingendzeth of the body of his wife: In this case the husband hath estate in the speciall tayle, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendzed: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if Lands be giuen to the husband and the wife, and to the heires that the husband ingendzeth on the body of the wife: In this case both haue estate in the taile, for that this word (heires) is limited no more to the one then to the other.

Also if Lands be giuen to a man and to his heires that he ingendzeth on the body of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendzed, this is a good taile, yet the father was dead at the time of the gift.

Also there be many other estates in the taile by the equitie of the said Estatute, that bee not specified here. But if a man giue Lands or Tenements to an other, to haue and to hold to him and to his heires males, or to his heires females, he to whom such gift is made hath fee simple, for that it is not limited by the gift of what body the issue male or female shall be, and so it may not in any thing be taken by the equitie of the said estatute, and therefore he hath fee simple.

v. pl. 10.

Tenant in taile after possibilitie of issue extinct.

32 TEnant in the tayle after possibilitie of the issue extinct, is whereas Lands or tenements be giuen vnto a man and to his wife in speciall taile, if one of them decease without issue, hee that suruiueth is tenant in the tayle after possibilitie of issue extinct. And if they haue issue, during the life of the issue, he that suruiueth shall not be said tenant in the tayle after possibilitie of issue extinct: yet if the issue decease without issue, so that there bee none aliue that may inherite by force of the tayle, then he that suruiueth of the donees is tenant in the taile after possibilitie of issue extinct.

33 Also, if Lands bee giuen to a man and to his heires that bee ingendred on the body of his wife. In this case the wife hath nought in the Tenements, and the husband is seised as

as donée in speciall tayle. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenant in the tayle after possibilitie of issue extinct.

¶ And note well, that none may be tenaunt in the tayle after possibilitie of issue extinct, but one of the doneés, or the donée in speciall taile, for the donée in general taile may neuer be said tenant in the tayle after possibilitie of issue extinct, for that alway during his life, he may by possibility haue issue that may inherite by force of the same taile. And so in the same manner the issue that is heire vnto the doneés in a speciall tayle, may not be said tenaunt in tayle after possibility &c. causa qua supra.

And tenant in taile after possibility of issue extinct shall neuer be punished of wast, for the inheritance that once was in him, Anno 10. Hen. 6. fol. 1. But he in the reuersion may enter if he doth alien in fée, An. 45. E. 3. fol. 22.

Tenant by the Curtesie of England.

TEnaunt by the Curtesie of England, is where a man taketh a wife seised in fée simple, or in fée taile generall, or as heire in the taile speciall, & hath issue by the same wife male or female borne alme, the issue after being dead or alme, if the wife decease the husband shall hold the same during his life by the Law

of

of England, and this is called tenaunt by the Curtesie, for that it is not vsed in any other Realme but onely in England. And some say that he shal not be said tenant by the Curtesie, but if the childe that hee hath by his wife bee heard cry, for by the cry is the proofe that the child that he had by his wife, was born aliue.

Tenant in Dower.

TEnant in Dower is, where a man is seised of certaine lands or tenements in fee simple or in generall taile, or as heire in the taile speciall, and taketh a wife and deceaseth, the wife after the decease of her husband shalbe endowed of the third part of such lands or tenements that were her husbands any time during the couerture, to haue & to hold to the same wife in seueralty, by meetes and bounds for terme of her life, whether shee haue by her husband issue or none, and of what age that the wyfe bee, so that shee passe the age of nine yeares at the time of her husbands death, or els she shall not be endowed.

And note well, that by the common law the wife shall not haue for her dower but the third part of the tenements, which were her husbands during the Espousels. By custome of some Countrey she shall haue the halfe: and by custome of some towne, or borough, she shall haue the whole: And in all these cases she shal be said tenant in Dower.

Also there is two other maner of Dowers, that is to say, Dower called dowment at the Church dore, and Dower called dowment by the fathers assent. Dowment at the church dore, is where a man of full age is seised in fee simple which shall be wedded vnto a wife, when he commeth to the Church dore, and there after affiance and trath pleight made betweene them, endoweth his wife of his whole land, or of the halfe, or iesse parcell, and there openly declareth the quantitie, and the certainty of his Land that shee shall haue for her Dower: In this case the wife after the death of her husband shall enter into the said quantitie of land, of which her husband endowed her without the assignement of any man. Dowmēt by the fathers assent is, where the father is seised of Lands or tenements in fee, and his sonne and heire apparent (when hee is wedded) endoweth his wife at the Church dore of parcell of the lands, or tenemēts of his fathers, by the assēt of his father, and assigneth the quantity of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignement of any other. But it hath bin said in this case, that it behoueth the wife to haue a deed of the father, prouing his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church dore, then she is concluded to clayme

any other Dower by the common law of any Lands or tenements, which were of the sayd husband. But if she will, shee may refuse such dower at the Church doze, and then she may bee endowed after the course of the Common Law. And note well, that no wife shalbe endowed of the fathers assent, in the iorme aforesaid, saue where the husband is son and heire apparant to his father.

Not in Cokes reading

Inquire of these two cases of Endowement at the Church doze &c. if the wife at the time of the death of her husband passe not the age of nine yeares, if she shall haue such dower or no.

And note well, that in all cases where the certaintie appeareth, what Lands or Tenements the wife shall haue for her Dower, the wife may enter after the death of her husband, without assignement of any other: But where the certaintie appeareth not, as to bee endowed of the third part, to haue in seuerall, or to be endowed of the halfe after the custome to hold in seuerality: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not limited before the assignement, what partes of Lands or Tenements she shall haue for her Dower. But if there bee two Joyntenants of certaine Lands in fee, and the one aliceneth that that to him pertayneth and belongeth, to another in fee, which taketh a wife and after dyeth: In this case the

the wife for her Dower shall haue the third part of the haike that her husband purchased, to hold in common, and occupie in common, as her part amounteth, with the heire of her husband, and with the other Iointenaunt which aliened not, for that in such case her Dower may not bee assigned by meetes and bounds.

And it is to bee vnderstoode, that the wife shal not be endowed of Lands or Tenements that her husband iointly held with an other at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesaid. And it is to wit, that if the Tenant in taile endow his wife at the Church dore as is aforesaid, that shall serue for little or nought to his wife, for that, that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in reuersion if there be no issue in the taile aliue.

Also, if a man seised in fée simple beeing within age, endow his wife at the Church dore, and dyeth, and the wife entreth: In this case the heire of the husband may put her out. But otherwise it is as it séemeth where the father is seised in fée, and the sonne within age endow his wife, of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowment De la pluis beale: And that is in such case, that a man is seised of xl. acres

of land, and he holdeth xx. of the said xl. acres of one man by Knights seruice, and the other xx. acres of another in socage, and taketh a wife, and hath issue a sonne, and dyeth, his sonne being within the age of foureteen yeres, and the Lord, of whom the land is holden by Knights seruice, entreth into the xx. acres of Land holden of him, and them hath and occupyeth as Warden in Chiualrie during the childes nonage, and the childs mother entreth in the remnant, and it occupieth as garden or warden in Socage: If in this case the wife bring a Writ of Dower against the Warden in Chiualrie, to be endowed of the Tenements holden by knights seruice in the kings Court, or in any other Court, the Garden in Chiualrie may plead in such case all the matter, and shew how the wife is warden in Socage as is aforesayd, and pray that it may bee adiudged by the Court, that the wife endow her selfe of the most faire, called Pluis beale, of the tenements that she hath as warden in socage, after the value of the third part that shee claymeth to haue of the tenements in chiualrie by her writ of Dower, and if the wife may not gainesay it, then the iudgement shall be made, that the warden in chiualry shal hold the lands holden of him during the nonage of the child quite from the woman &c. And that the woman may endow her selfe of the most faire part of the Lands that she hath as Warden in Socage to the value of the third part

part that the warden in chiualry hath &c.

48 And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by mẽtes and bounds of the fairest part of the tenements that shẽ hath, as warden in Socage, to the value of the third part of the lands that the warden in Chiualer hath, and that to haue and holde for terme of her life. And such Dower is called Dower of the fairest part, or De pluis beale.

49 With this agreẽth P.45.Edw.3.fol 4. But there it was said, that after the time that the heire comes to his full age, the wife shall haue a new action of Dower against the heire, to be endowed of the third part of all that the man died seised. And note well, that such dowment may not be, but where the iudgement is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estatn of the warden in chiualry during the nonage of the child. And so yẽ may sẽ fiue manner of dowers, that is to say, Dower by the common Law, Dower by custome, Dower at the Church doore, Dower of the Fathers assent, and Dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenements &c. so that the issue that he hath by his wife may by possibilitie inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hẽ shall haue the same tenements by the Curtesie of Enge

* 1372

Tenant by curtesy is can only be of lands wc. if son of one's wife might possibly wherit.

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land and otherwise not.

Lea of dower

And also in euery case where ẏ wife taketh an husband seised of such estate of tenements &c. so that by possibility it may happē the wife to haue some issue by her husband, and that the same issue may by possibilitie inherite the same tenements of such estate that the husband had as heire to his father, of such Tenements she shall haue her dower, and otherwise not. For if the tenements be giuen vnto a man and to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donee in special taile: Yet if the husband die without issue, the same wife shalbe endowed of the same tenements, for that the issue that shee by possibilitie might haue had by the same husband, may inherite the same tenements. But if the wife decease, lyuing the husband, which after taketh another wife, the second wife shal not be endowed in this case. Causa qua supra.

A man was seised of certaine Lands, and tooke wife, and after aliened the same Lands with warrantie, and after the feoffour and the feoffee died, & the wife of the feoffor bringeth an action of Dower against the issue of the feoffee, and hee vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bringeth an action of dower against the heire of the feoffee, and demaundeth the third part of all that her husband was seised, and would not demaund

Coke thinks this can not stated by Littleton but an interpolation or Note by some former editor

maund the third part of those two parts that her husband was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plee were determined.

5 And also note that Vauisor saith, that if a man be seised of lands, and committeth Felonie, and alieneth, & after is attainted, the wife shall haue good action of dower against the feoffee. But if it be escheated vnto ye king, or vnto the Lord, shee shall haue no writ of dower. And so see the diuersity, and inquire the cause.

Tenant for terme of life.

6 TEnant for terme of life is, where a man letteth Lands or Tenements to another for terme of life of the lessee, or for terme of life of another man: In such case the lessee is tenāt for terme of life. But by common language, hee that holdeth for terme of his owne life, is called tenant for terme of life, and hee that holdeth for terme of another mans life, is called Tenaunt for terme of another mans life. And it is to be vnderstood, that there is feoffour and feoffee, donour and donee, lessour and lessee. The feoffour is properly where a man infeoffeth another in any Lands or tenements in fee simple, he that maketh the feoffement is called the feoffor, and he to whom the feoffement is made, is called ye feoffee. And the donour is properly, where a man giueth certaine Lands or Tenements to another in

the taile, he that maketh the gift is called donor, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to another certaine lands or tenements for terme of life, for terme of yeares or to hold at will, hee that maketh the Lease is called lessour, and hee to whom the lease is made is called lessee, and euerie one that hath estate in Lands or Tenements for terme of his owne life, or for term of anothers mans life, is called Tenaunt of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freehold, for tenaunt in fee simple hath freehold, and tenant in the taile hath also freehold.

Freehold what

Not of inheritance

Tenant for terme of yeares.

58 TEnant for terme of yeares is, where a man letteth Lands or tenements to another for terme of certaine yeares, after the number of yeares that is accorded between the lessor and the lessee. And when the lessee entreth by force of the lease, thē is he tenāt for terme of yeres, and if the lessour in such case reserue to him a yearely rent vpon such lease, hee may choose for to distraine for the rent in the tenements letten, or else hee may haue an Action of debt for the arrerages against the lessee. But in such case it behoueth that the lessour be seised in the same tenements at the time of his lease, for

action for rent

seisin in lessor

it

Norman "selonque" meaning "according to"

it is a good plee for the lessée to say, that the lessor had nothing in the tenemēts at the time of the lease, except the lease be made by deed indented, in which case then such plee lieth not for the lessée to plead.

And it is to be vnderstood, that in a Lease for terme of yeares, by deed or without deed, it needeth no liuerie of seisin to be made to the lessée, but he may enter whensoeuer hée will by force of the same Lease. But of feoffements made in the Countrey or gifts in the taile, or Leases for terme of life, in such cases where freehold shall passe, if it be by deed or without deede, it behooueth to haue liuerie of seisin &c.

60 But if a man let Lands or tenements by deed or without deede for terme of yeares, the remainder ouer to another for terme of life, or in the taile, or in fee, then in such case it behooueth that the lessor make liuery of seisin to the lessée for terme of yeares, or else there shall nothing passe to them in the remainder, though the lessee enter in the tenemēts. And if the termor in such case enter before any such liuery of seisin made vnto him, then is the freehold and the reuersion in the lessor. But if he make any liuery of seisin vnto the lessee, then is the freehold with the fee to them in the remainder after the forme of the graunt, and will of the lessor.

61 And if a man will make a feoffement by deede or without deede, of Lands or Tenements that hee hath in many Townes in one Shire, if the liuerie of seisin be made in one par=

parcell of the tenements in one Towne in the name of all, it sufficeth for all the other lands or tenements comprehended in the same feffement, in all other townes in the same Shire. But if a mā make a dēed of feoffemēt of lands or tenements in diuers shires, there it behooueth him to haue in euerie shire a liuery of seisin. And in some case a man shall haue, by the graunt of another, fee simple, fee taile, or freehold, without liuerie of seisin. As if two men be, and each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchāge for that land that the other hath, & in the same manner the other granteth his land vnto the first grantor in exchange for the lād that the first grantor hath: In this case each may enter in ye others lāds so taken in exchāge, without any liuerie of seisin. And such exchange made by words, of tenements within the same Shire without any writing, is good enough. And if the Lands or tenements be in diuers shires, that is to say, if that ye one haue in one shire, & ye the other haue in another shire, it behooueth to haue a dēed indented made between them of such exchange. And note, that in exchanges it behooueth that the estates that both parties haue in the lands so exchanged, be equall: For if the one willeth & grāteth that the other shal haue his land in the taile, for the land that he hath of the grant of the other in fee simple, though the other agree to that, yet this exchange is but void, for that

Exchanges wt liuery in same county

but by deed indented in different —

equality in quantity of interest

that the eſtates be not euen.

In the ſame maner it is where it is graun-ted and agreed betweene them, that the one ſhal haue in the one Land fee taile, & the other ſhal haue in the other Land but terme of life. Or if one ſhall haue in the one Land fee taile gene-rall, and the other in the other Land fee taile eſpeciall &c. So alway it behoueth that in ex-change the eſtate of both parties be euen, that is to ſay, if the one haue fee ſimple in the one Land, that the other ſhall haue ſuch eſtate in the other land, and if the one haue fee taile in the one land, then the other ſhall haue likewiſe in the other Land. Et ſic de alijs ſtatibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is ſo much more in value then the land of the other, this is nothing to the purpoſe, ſo that the e-ſtates made by the exchange be euen, & in ex-change be two graunts, for euery party grā-teth his Land to the other in exchange, and in each of their graunts mention ſhall be made of the exchange.

And if a man let land to another for terme of yeres, though the leſſor die before the leſſee enter into the tenements, yet may he enter in-to the tenements after the death of the leſſor, for that that the leſſee by force of the leaſe hath right incontinent to haue the tenements af-ter the tourne of the Leaſe. But if a man make a deed of feoffement vnto an other, and a letter of attorney to a man to deliuer to him ſeiſin

seisin by force of the same deed, yet if the liuerie of seisin bee not, made in the life of him that made the deede, it auayleth not for that the other hath no maner of right to haue the tenements after the purport of the deede before the liuerie of seisin &c. And if no liuerie be made, then after the death of him that made the deed, the right of such tenemẽts is incontinently in his heire, or in some other. Also if tenements be let to a man for terme of halfe a peare, or for terme of a quarter of a yere &c. In such case, if the lessee make wast, the lessour shall haue against him a writt of Wast, and the writ shall say, Quod tenet ad terminum annorum. But hee shall haue a speciall declaration vpon the troth of this matter, and the plea shall not abate the writ, for that that he may haue no other writ vpon the matter. An. 7. H. 7. fol 1.

Tenant at will.

65 TEnaunt at will is, where Lands or Tenements bee letten by a man vnto an other, To haue and to hold to him at the will of the lessour, by force of which lease the lessee is in possession: In such case the lessee is called tenant at will, for that he hath no certaine nor sure estate, for the lessor may put him out at what time it pleaseth him: yet if the lessee sow the land, & the lessor (after the sowing and before that his graynes be ripe) put him out, yet shall the lessee haue his graynes, and shal haue free egresse and regresse to reape and to carry his

his graynes, for that he will not at what time his lessour would enter vpon him. Otherwise it is if tenant for term of yeares before the end of his terme soweth the Land, and the terme end before that his graynes be ripe: In this case the lessor, or he in the reuersion shall haue the graynes, for that the termor knew well the certeintie of his terme, & when his terme should be ended.

59 Also, if a house be let to a man to hold at will, by force of which the lessee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall he haue free entrie, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fee simple, fee taile, or for term of life, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shal his executors haue free entrie, egresse, and regresse to carrie out of the house the goods of their testator by a reasonable time.

60 Also, if a man make a deede of feoffement vnto an other of certain Land, and deliuereth to him the deed, but no liuery of seisin: In this case he to whom the deed is made may enter into the Land, and hold and occupie it at the will of him that made the deed, for that that it is proued by the words of the deed, that it is his will that the other shal haue the land. But

he

he that made the deede, may put him out when he will.

71 Also if an house be let to hold at will, the lessee is not holden to sustaine or repaire the house, as tenant for terme of yeares is holden to doe. But if the lessee at will make voluntarie wast, as in pulling downe of houses, or in cutting or felling of trees: It is said that the lessour shal haue for that against him an action of Trespas. As if I deliuer to a man my sheep to dunge or marle his Land, or mine oxen to eyze his land, and he slayeth the beasts, I may well haue an action of Trespas against him notwithstanding the deliuerie.

Repaires of house

Bailment

Also if the lessour vpon such lease at will reserue vnto him a yearely rent, he may distraine for the rent behind, or haue for that an action of Debt at his owne choise (Hill. 6. Rich. 2. in a Repleuin.)

Action for rent

new addition

Tenant by Copie of Court Rolle.

TEnant by Copie of Court Rolle is, as if a man bee seised of a Manour, within which Manour there is a custome, e hath beene vsed in time out of minde, that certaine Tenaunts within the same Manour haue vsed to haue Lands or Tenements, to hold to them and to their heires in fee simple, or in fee taile, or for terme of life &c. at the will of the Lord, after the custome of the same Manor: and such a tenant may not alien the land by deede, for then the

meaning to plough for a Newcom ever

the lord may enter as in a thing forfeit to him. But if he will alien his Land to another, him behoueth after some custome to surrender the tenements in some Court &c. into the Lords hands, to the vse of him that shall haue the estate, in such forme, or to such effect.

Manner of aliening

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum mesuagium &c. in manus domini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt' vel pro termino vitæ suę &c. Et super hoc venit predictus E. de A. & cepit de domino in eadem Curia mesuagium predictum &c. Habendum & tenendum sibi & hęredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerij, faciend' & reddend' inde redditus debit', seruitia, & consuetudines inde prius debita, & de iure consueta, Et dat domino de fine &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a mease &c. into the hands of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of life &c. And vpon that, commeth the foresaid E. of A. and taketh of the Lord in the same court, the foresaid mease &c. To haue and to hold to him and to his heires, or to him and to his heirs issuing of his body. or to him for terme of life, at the Lords will, after the custome of the manor to do and yeeld there.

Copy of record in court rolle

Habendum & tenendum

Services rents &c

therefore rents, debts, seruices, and customes thereof before due and accustomed &c. and giueth the Lord for a fine &c. and maketh vnto the Lord his fealtie &c. And such tenants be called tenants by Copie of Court Rolle, for that they haue no other euidences concerning their tenements, but the Copies of the Court Rolles: And such Tenants shall not implead nor be impleaded for their Tenements by the Kings writ. But if they will implead other for their Tenements they shall haue a plaint made in the Court of the Lord in such forme, or to such effect. A. de B. queritur versus C. de D. in placito terræ, videlicet, de vno mesuagio, quadraginta acris terr', quatuor aeris prati &c. cum pertinentijs. Et facit protestationem sequi querelam istam in natura breuis Domini Regis Assisæ mortis antecessoris ad communem Legem, vel breuis domini Regis Assisę nouæ disseisi. ad communem Legem. That is to say, A. of B. complaineth against C. of D. of a plee of land: That is to say, of a mease, and fortie acres of Land, foure acres of meadow &c. with the appurtenances. And maketh protestation to sue his plaint in nature of the kings writ of Assise of the death of his auncestor at the common Law, or by a Writ of our Soueraigne Lord the King, of Assise of nouel disseisin at the commod Lawe, or in nature of some other writ &c. pledges to prosecute, F. B. &c. And though that some such tenaunts haue inheritance after the custome of the maner, yet they

nor impleaded by Kings writ

they haue none estate but at the Lords will, and after the course of the common Law, for it is said, if the Lord put them out, they haue no other remedie but to sue vnto the Lord by petition: For if they had any other remedie they should not be said tenants at the Lordes will after the custome of the Mannor, but the Lord will not breake the custome that is reasonable in such cases. But Brian chief Iustice saith, that his opinion hath alwaies beene, and alwayes shall be, if such a tenaunt by custome (paying his seruices) be cast out by the Lord, he shall haue an action of trespas against him, H.2.E.4.fol.80. And likewise was the opinion of Danby chiefe Iustice M.7.E.4.fol.19. for hee saith that the tenant by the Custome, is aswel inheritable to haue the land after the custome, as well as he that hath franktenement by the common Law.

action of trespass at common law for ouster of land of a manor

TEnants by the Yarde*, be in such nature as tenants by Copie of Court Rol: But the cause for which they be called tenaunts by the Rodde, or Yarde, is, for that when they wil surrender their Tenements into the Lordes hand, to the vse of another, they shall haue a little yarde or rodde by the custome and vse, in their hands, which they shall deliuer vnto the Steward or Baylife, after the Custome and vse of the manor, and hee that shall haue the land, shall take the same land in the Court, and his taking shall be entred in the Rolle. And the Steward, or the bailife, according to

Tenants by a verge

the

* Translated by Coke 'verge'

the custome, shall deliuer vnto him, that taketh the Land, the same yard or another yard in the name of seisin. And for this cause they be called Tenants by the yard. But they haue none other Euidence but Copie of the Court Rolle.

Customs in diff't manors

And also in diuers Lordships and Mannors there is such a custome, if such a tenaunt that holdeth by the Custome will alien his Lands or Tenements, he may surrender his lands vnto the Baylife, or to the Reeue, or to 2 honest men of the same Lordship, to the vse of him that shall haue the Land, to haue in fee simple, fee taile, or for terme of life &c. and all that shall be presented at the next Court. And then he that shall haue the Land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in diuers Lordships, & diuers manors, there be made diuers Customes in such cases, as to take Tenements, & as to plead, & as touching other things and customes to be done, and all that, that is not against reason, may well bee admitted and allowed. And such tenants that hold after the custome of a seigniory, or after the custome of a Mannor, though they haue estate of inheritaunce after the custome of the lordship, or of the manor, yet because they haue not any freehold by the course of the Common Law, they be called tenants of base tenure.

Freehold by custom of manor is base tenure by common law.

And diuers diuersities there be betweene a tenant at will, which is in, by the lease of his lessor

Difference between tenancy at will by common law & custom. the former being an inheritance

lessor by the course of the common law, and tenant after the custome of the manor in the fourme aforesaide. For tenant at will after the custome may haue estate of inheritaunce, as it is aforesaid at the lords will after the custome and vsage of the Manor: But if a man haue lands or tenements which be not within such Manor or Lordship where such custome hath bene vsed in the fourme aforesaid, and will let such Lands or tenements to another, to haue and to hold to him and to his heires at the will of his Lessor, these words, to the heires of the Lessee be void, for this is the cause, if the lessee die, and his heire enter, the lessor shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case &c. for that the custome of the Manour in some cale may helpe him to barre his Lord in an action of Trespas.

Also Tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenaunt at will ought not. Also one by the custome shall doe Fealtie, and the other not. And diuers other diuersities there bee betweene them. Repayring houses. Fealty.

Thus endeth the first booke.

Book 2nd Iames

Homage.

HOmage is the moſt honourable ſeruice and moſt humble ſeruice of reuerence that a Franktenaunt may doe to his Lord: For when the Tenaunt ſhall make Homage to his Lord, hee ſhall bee vngirt, and his head vncouered, and his Lord ſhall ſit, and the Tenaunt ſhall kneele before him on both his knees, and hold his hands iointly together betweene the hands of his Lord, and ſhall ſay thus: I become your man from this day forward of life and limme, and of earthly worſhip, and vnto you ſhall be true and faithfull, and beare you faith for the tenements that I claime to hold of you, (ſauing the faith that I owe vnto our Soueraigne Lord the King.) And then the Lord ſo ſitting ſhall kiſſe him.

But if an Abbot, or Prior, or any other man of religion ſhall make Homage vnto his Lord, he ſhall not ſay, I become your man, for that he hath profeſſed himſelfe onely to be Gods man: But he ſhal ſay thus, I doe you homage, and vnto you ſhall be true and faithfull, and beare you faith for the Tenements that I claime to hold of you; Sauing the faith that I owe vnto our Soueraigne Lord the King.

Alſo, if a woman ſole ſhall make Homage vnto the Lord, ſhee ſhall not ſay, I become your woman, for that is not conuenient for a woman to ſay, that ſhe ſhall become a woman to any but onely to her Huſband

band when she is wedded, But she shall say, I make vnto you Homage, and to you shall be true and faithfull, and shall beare you faith for the tenements that I hold of you, sauing the faith that I owe to our Soueraign Lord the King.

But if a man haue seuerall tenancies which he holdeth of seuerall Lords, that is to say, euerie tenancie by Homage: Then when he maketh homage vnto one of his Lords, hee shall say in the end of his Homage, Sauing the faith that I owe vnto the King, and vnto my other Lords.

And note well, that none make Homage, but such as haue estate in fee simple, or in fee taile in his owne right, or in any other mans right: For it is a ground in the Law, that he that hath estate but for terme of life, shal make none homage, nor take none homage.

For if a woman haue lands or tenements in fee simple, or in fee taile, which shee holdeth of her Lord by homage, and taketh an husband, and hath issue, then the husband in the life of the wife shall make homage, for that hee hath title to haue the land by the curtesie, if he survive his wife: And also he holdeth in the right of his wife. But afore issue betweene them, the Homage shall be made in both their names: But if the wife decease before homage made by the husband in the wifes life, and the husband holdeth himselfe in as tenant by the curtesie, he shall make no Homage vnto

his Lord, for that he hath thē none estate but for terme of life. More shall be said of Homage in the tenure of Homage auncestrell.

Fealty.

91.

FEalty is as much to say, as Fidelitas in Latin: and when a franktenant shall make fealty vnto the Lord, he shall hold his right hand vpon a booke, and shall say thus:

Heare you this my Lord, that I vnto you shall be faithfull and true, and beare you faith for the Lands & Tenements, that I claime to hold of you, and truely to you shall doe the customes and seruices that I ought to doe vnto you at termes assigned, as God me helpe & all his Saints, & then he kisseth the booke: But he shall not knele when he maketh his fealtie, nor shall make such humble reuerence, as is aforesayd in Homage. And great diuersitie there is had betweene making of Fealtie, and of Homage: For Homage may not be made but to the Lord himselfe. But the Steward of the Lords Court, or the Baylife may take Fealty for the Lord.

Fealty to steward instead of Lord

Also tenant for terme of life shall make Fealty, and yet he shall make none homage. And diuers other diuersities there be betweene homage and Fealtie.

Tenant for life

Also a man may see a good note, An. 15. Edw. 3. where and how a man and his wife made homage and fealty in the common bank, which is written in such fourme, Note that

John

This account of fealty is not in Cokes reading

John Lewknor & Elizabeth his wife made homage vnto William Thorpe in this manner: The one and the other held iointly their hands betweene the hands of William Thorpe, and the husband said in this sorte: wee vnto you make Homage, and beare you faith for the lands that wee hold of you your seruice, which hath graunted your seruices in W. and in C. and the other townes &c. against all men (sauing the faith that wee owe vnto our Soueraigne Lord the King, and to his heires, & to our other Lords) and the one and the other kissed him. And after they made fealtie, and the one & the other held their hands together vpon a Booke, & the husband said the words, and both kissed the Booke. Homage shalbe layd of Fealty in the tenure of Escuage, and in the tenure of Frankalmoigne, and in the tenure of Homage auncestrell.

Escuage.

ESCuage is called in Latin Scutagium, that is to say, seruice of shield. And such a tenant that holdeth his land by Escuage, holdeth by Knights seruice. And also it is commonly said, that some hold by a fee of knights seruice, and some by halfe a fee of knights seruice &c. And it is said, that when the king maketh a voiage royall into Scotland for to subdue the Scots, hee that holdeth by a fee of knights seruice, behoueth to be with the king for forty dayes, well & conuenably arrayed for the warre. And

likewise hee that holdeth his land by the halfe of a fee by Knights seruice, ought to bee with the king by xx. daies. And he that holdeth his Land by the fourth part of a fee by Knights seruice, him behoueth to be with the King by ten dayes, and so after the quantitie, hee that hath more, to doe more, and he that hath lesse, to doe lesse.

But it appeareth by the plees & arguments made in a good plee vpon a writ of Detinue of an Obligation, brought by one Henry Gray, An. 7. E. 3. fol. 19. that it nedeth not to him that holdeth by Escuage to goe himselfe, if hee will find an able person for the warr commenably arrayed for the warre, to goe with the king, and that seemeth good reason: for it may be, that he that holdeth by such seruice is sick, in such wise that he may not goe nor ride.

And also an Abbot, or any other man of religion, or a Woman sole that holdeth by such seruice, ought not in such case to goe in proper person. And Sir William Herle that time chiefe Justice of the common Place said in the said Plee, that Escuage shall not be graunted, but where the King himselfe goeth in proper person. And so it abode in iuggement of the same plee, if these xl. dayes shall be accompted from the day of the Muster of the kings host made by the commons and the kings commaundement: Or els from the day that the king first entreth into Scotland &c. therefore inquire of this matter.

And

And after such voyage into Scotland it is commonly said, that by the authoritie of Parliament, the Escuage shalbe set and put in certaine: that is to say, a certaine summe of money how much euerie one y holdeth by a whole fee of Knights seruice, which was not in his owne proper person, nor none other for him with the King, shall pay vnto the Lord, of whom he holdeth his land by escuage. As put case that it was ordained by authority of parliament, that euery one that holdeth by a whole fee by Knights seruice, which was not with the King shall pay to his Lord xl.s. That he that holdeth by the halfe of a fee by Knights seruice, shall pay vnto his Lord but xx.s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by authoritie of parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fourth part of that summe. But because the Escuage that they shall pay is not certaine, for that it is of no certaine what the Parliament will assesse the Escuage, they hold by Knights seruice. But otherwise it is of Escuage certaine, of which shall be spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be vnderstood by the common speech of Escuage not certaine, which is Knights seruice: And such Escuage draweth vnto him Homage, and Homage draweth vnto him Fealtie, for fealtie is incident to euery manner of

cuage seruice

seruice, but to the tennre of frankalmoigne, as it shalbe said hereafter in the tenure of frankalmoigne: So as he that holdeth by Escuage holdeth by homage, fealty, and Escuage.

And it is to be vnderstood, that when Escuage is so selled by authority of Parliament, euerie Lord of whom the land is holden by escuage, shall haue the Escuage so selled by the Parliament, because it is vnderstood by the Law, that at the beginning such Tenements were giuen by the Lords to hold by such seruices to defend their Lords as well as the King, and to set in quiet and rest their Lords against the King of Scots aforesaid. And for that such Tenements came first of the Lords, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distreine for the Escuage so assessed, or they may haue the Kings writs, directed vnto the Shiriffes of the Shire, to leuy such Escuage for them, as it appeareth by the Register fol. 88.

But of such tenants that hold of the King by Escuage, which were not with the King in Scotland, the King himselfe shall haue the escuage.

Item, in such case aforesaide, whereas the King maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole knights fee, for the escuage so assessed &c. and the tenant pleads

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and will averre that he was with the king in Scotland &c. by xl. dayes, and the Lord will averre the contrarie, it is sayd that it shall be tried by the certification of the Marshal of the Kings host in writing vnder his seale, which shall be sent to the Justices.

Homage, Escuage, and Fealtie.

TEnure by Homage, Escuage, and Fealtie, is to hold by knights service, and it draweth vnto it ward, Mariage, and reliefe. For when such a tenant dieth, his heire male being within the age of xxj. yeares, the Lord shall haue the land holden of him vnto the age of the heire of one and twenty yeres, which is called full age, for that such an heire by the vnderstanding of the Lawes is not able to do knights seruice before the age of xxj. yeres.

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And also if such an heire be not married at the time of the death of his auncester, then the Lord shall haue the ward and mariage of him. But if such a Tenant die, his heire female being of the age of foureteene yeares or more, then the Lord shal not haue the ward neither of the Land nor of the bodie, for that a woman of such age may haue a husband able to do knights seruice. But if such an heire female be within the age of foureteene yeres and not married at the time of the death of her auncester, then the Lord shall haue the

ward

ward of the Lands holden of him, till the age of such an heire female of 16 yeares: For that it is giuen by the statute of Westmin. 1. cap. 22. that by two yeares next following the said 14. yeares, the Lord may tender a conuenient mariage without disparaging of such an heire female. And if the Lord do not tender her such mariage within the said two yeares, then shee at the end of the said two yeares may enter and put out the Lord. But if such an heire female bee married within the age of 14. yeares in the life of the auncester, and the auncester die, she being within the age of 14. yeares, the Lord shall haue but the ward of the land, till an end of 14. yeares of age of such an heire female: And then her husband and shee may enter into the land & put out the Lord, for this is out of the case of the Statute: Insomuch that the Lord cannot tender marriage to her that is maried &c. For before the said statute of Westm' 1. such issue female that was within age of 14. yeres at the time of the death of her auncester, and after that shee had accomplished the age of fourteene yeares without any tender of marriage to her by the Lord, such an heire female then might enter into the Land, and put out the Lord, as appeareth by the reherfall, and by the words of the same Statute: So that the said Statute was made in such case all for the aduauntage of the Lord as it seemeth. But yet that at all times it is vnderstood by the words of the same

ſame eſtatute, that the Lord ſhall not haue the two yeare after the xiiij. yeare, as is afore- 14
ſaid.

And note well, that the full age of the male and female after the comm̃ ſpech is ſaid the age of xxj. And the age of diſcretion is ſayd 21-
the age of xiiij. yeares, for a child at ſuch age, 14-
which is wedded within ſuch age to a woman, may agree to the mariage or diſagree.

And if the warden in chiualry marry once his ward within the age of xiiij. yeares, and 14-
after the age of xiiij. yeares hee diſagreeth to 14-
the marriage. It is ſayd by ſome folke that the childe is not holden by the Lawe to be married an other time by his warden, for that the warden had once the marriage of him, and therefore he was out of his ward, as concerning the ward of his bodie. And when he had once the marriage of him, and therefore was out of his ward, hee ſhall no more haue the marriage of him. In the ſame manner it is, if the warden marie him, and the wife die, the childe beeing within age of xiiij. yeres, or xxj. 14-21-
yeares. And that the child may diſagree to ſuch marriage when hee commeth to thage of xiiij. yeres, it is proued by the words of the 12
Statute of Merton cap. 6. that ſaith thus: De dominis qui maritauerint illos quos habẽt in cuſtodia ſua, villanis, & alijs, ſicut burgenſibus vbi diſparagentur, ſi tales homines fuerint infra xiiij. annos, & talis ætatis quod matrimonio conſentire non poſſint, tunc ſi parentes

rentes illius conquerant', dominus ille amittat cuſtodiam illam vſque ad ætatem hæredis. Et omne commodū quod inde recepť fuerit conuertatur in commodum hæredis infra ætatem exiſtentis, ſecundum diſpoſitionem parentum, propter dedecus ei impoſitum. Si autem fuerit 14. annorum & vltra quod conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pœna. And ſo it is proued by the ſame ſtatute that no diſparagement ſhall be, but where that he that hath the ward marieth him within the age of xiiij. yeres.

Alſo it hath bin a queſtion how theſe wordes ſhould be vnderſtood: Si parentes conquerantur &c. And it ſeemeth vnto ſome that, conſidering the ſtatute of Magna charta cap. 6. that willeth, that hæredes maritentur abſque diſparagatione &c. vpon which the ſaid Statute of Merton vpon this point is grounded, as it ſeemeth, and inſomuch as it was neuer ſeene that any action was brought vpon the ſtatute of Merton for ſuch diſparaging againſt the Gardein, and if an action may bee taken vpon ſuch matter, it ſhall bee taken by common preſumption before this time, or at ſome time to be put in vre, that theſe wordes ſhal bee vnderſtood in ſuch manner, Si parentes conquerantur, i. Si parentes inter ſe lamentantur, which is as much as to ſay, that if the Cofins of ſuch a child haue cauſe to make lamentation and complaint amongſt them for the ſhame done to their cofin ſo diſparaged,

which

which is in a maner a shame to them all, then may the next cosin to whom the heritage may not discend enter, and put out the Warden in Chiualry. And if he will not, another cosin of the childs may doe it, and he to take the issues and profits vnto the vse of the child, and of that paid the child account when he commeth vnto his full age: Or else the child within age may enter himselfe, & put out the Warden &c. Sed Quære de hoc.

Also there are many other kinds of disparagings, which bee not specified in the same Statute: As if the heire that is in ward be married vnto one that hath but one foote, or one hand, or else deformed, or lame, or hauing an horrible disease, or else a great & continuall infirmitie: Or if the heire male be married to a woman past child bearing. And many other causes of disparaging there be, but inquire for them, for it is a good matter to learne. And of heires males that be within age of one and twentie yeares after the death of their auncestors vnmarried: In such case the Lord shal haue the marriage of such an heire, and haue space and time to tender to him conuenable marriage without disparaging within the same time of xxj. yeres.

And it is to wit, that the heire in such case may chuse if he will bee married or no. But if the Lord which is called Warden in Chiualry, tender a conuenable marriage to such an heire within the age of one and twen-

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tie & one yeres, without disparaging, and the heire refuse, and mary not himselfe within the same age: Then the said warden shall haue the value of the marriage of such an heire. But if such an heire male marrie himselfe within the age of xxj. yeares, against the will of the warden in chiualry, then shal the warden haue double the value of the marriage, by force of the statute of Merton aforesaid, as in the same statute is more fully compyled. 21

And diuers tenants hold of their Lords by knights seruice, & yet they hold not by Escuage, nor pay no Escuage, as they that hold their land by Castlewarde, that is to say, to kepe a Towre of a Castle, or a gaole, or some other place by reasonable warning, whē their Lords heare tell that enemies will come, or be come into England. And in many other cases a man may hold by knights seruice, and yet he holdeth not by Escuage, nor payeth no Escuage, as shal be said in the tenure of Graund Serieantie. But in all cases where a man holdeth by knights seruice, such seruices drawe to the Lord, ward, and mariage.

And if a tenant that holdeth of his Lord by seruice of an whole knights fee die, his heire being of full age of one and twentie yeres, his heire shal pay vnto the Lord C.s. for a reliefe, And he that holdeth by the halfe fee shall pay L.s. 1715. 505.

Also if a man hold his Land of the Lord by the seruice of two knights fees, then the heire

heire at full age at the time of the death of his auncestor, shall pay to his Lord ten pound for a reliefe.

Also if there be graundfather, mother, and sonne, and the mother dieth living the father of the sonne, and after the grandfather which held his land by Knights service dyeth seised, and the land discendeth to the sonne of the mother, as heire to the Graundfather, which is within age: In such case the Lord shall haue the ward of the land, but not the ward of the heire: For that none shalbe in ward of his body living his father, because the father during his life shal haue the marriage of his heire apparant, and not the Lord. Otherwise it is if the father bee dead living the mother, where the land holden in Chivalrie discendeth to the sonne on the fathers side &c.

Also if a man be seised of land which is holden by Knights service, and maketh a feoffement in fee to his vse, and dyeth seised of the vse, his heire within age, and no will by him declared, the Lord shall haue a writ of Right, of the body and the land, like as if the tenaunt had died seised of the demeine. And if the heire be of full age at the death of his auncestor, in such a case he shall pay relefe, like as if he had been seised of a demeine, and that is by the statute of An. 4. H. 7. cap. 17.

Also there is a warden in right in chivalry, and a warden in deed in chivalry: warden in right in chivalrie, is where the Lord because

of his Lordshippe is seised of the ward of the Land, and the heire vt supra. Warden in deed in Chiualrie, is where the Lord in such case after his seising graunteth by deed, or without deed, the ward of the land, or of the heire, or of both to another man, by force of which graunt the graunte is in possession, then is the grantee called warden in deed &c.

Tenure in Socage.

TEnure in Socage, is where the Tenaunt holdeth of his Lord the tenancie by certaine seruice for all maner of services, so that the seruice bee not knights seruice: As where a man holdeth his Land of his Lord by fealty and certaine rent for all maner of services: Or else where a man holdeth his land by homage, fealtie, & certain rent, for all maner of services, for homage by it selfe maketh not knights seruice.

Also a man may hold of his Lord onely by fealty, and such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, & hath the name of tenure in Socage, is this: Quia hoc Socag, idem est, quod seruic' Socæ, Et hæc Soca Socæ, idem est quod Caruca, s. one Yoke, or one plough Land.

And in olde time before the limitation of

of time out of mind, great part of the tenants that held of their Lords by Socage, ought to come with their Ploughes, euerie of the said tenants by certaine dayes in the yeare, to eyze and sow the Lords Lands of his owne graines. But for that such works were done for the liuelode and sustenance of their lords, they were acquited against their Lord of all manner of seruices. And for this, that such seruice was done with their Ploughes, such tenure was called tenure in Socage. And after that such seruices were chaunged into diuers other manner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yeately rent &c. But yet the name of Socage abydeth, and in diuers places Tenaunts yet doe such seruice with their Ploughes vnto their Lord, so that all manner of seruices that bee not Tenures in knights seruice, bee called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine, That is to say, in such fourme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the Tenant shall pay to the Lord but halfe a Marke for estuage, & neither more ne lesse, to how great summe, or little summe that the Escuage runneth, in this case because the escuage is certaine before that any escuage is assessed &c. such tenure is tenure in Socage, and not knights seruice. But where the

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ſumme that the tenant ſhall pay for Eſcuage, is not certaine, that is to ſay, where it may be that the ſumme that the Tenant ſhall pay for eſcuage may be at one time more, and an other leſſe, after that it is aſſeſſed &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his Land for to pay certeine rent to his Lord for Caſtlegard, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him, or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in all caſes where the tenant holdeth of his Lord to pay to him any certaine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenant haue iſſue and die, his iſſue being within the age of 14. yeares, then the next friend of that heire to whom the heritage may not deſcend ſhal haue the ward of the land, and of the heire vnto the age of the heire of 14. yeres, and ſuch warden is called warden in Socage. For if Land deſcend to the heire by the fathers ſide, then the mother, or ſome other nigh coſen of the mothers ſide ſhall haue the ward. And if land deſcend to the heire by the mothers ſide, then the father or the next friend of the fathers ſide ſhall haue the ward of ſuch Landes or tenements. And when the heire commeth to the age of 14. yeares complete, he may entre & put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch warden in

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Socage shall take no issues or profits of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yeeld accompt when it pleaseth the heire, after that the heire hath accomplished the age of foureteene yeres. But such a warden vpon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marry the heire within age of foureteene yere, he shall make accompt to the heire, or to his executors of the value of the marriage, though he take nothing for the value of the marriage, for that it shal be counted his owne folly, that hee would marrie him without taking the value of the mariage, without his marrie him to such a marriage that is worth in value as much as the marriage of the heire &c. Also if any other man that is not a nigh friend &c. occupie the lands and tenements of the heire as warden in Socage, hee shall be compelled to yeeld accompt vnto the heire, as well as his next friend: For it is no plee for him in a writ of accompt to say that hee is not his nigh friend &c. But hee shall answere whether hee occupieth the Landes or Tenements as warden in Socage or not. But inquire if after that the heire haue accomplished the age of foureteene yere, and the warden in socage continually occupyeth the Land, till the heire commeth to full age of xxj. yeares, If the heire at his full age shall haue an Action of Accompt against the

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wardein for the time that hee hath occupied after the said foureteene yeres, as against his wardein in Socage, or against him as against his Baylife.

Also if wardein in chiualry make his executors, and dye, the heire being within age &c. The executors shal haue the ward, during the nonage. But if the wardein in Socage make executors and dye, the heire being within the age of foureteene yeares, his executors shall not haue the warde, but another nigh friend to whom the heritage may not descend, shall haue the ward. And the cause of diuersitie is, for that the wardein in Chiualrie hath the warde to his proper vse, and the wardein in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case, where the wardein in Socage dyeth before any such accompt made by him, the heire is of that without remedie, for that no writ of accompt lyeth against the executors, but onely for the King.

Also the Lord of whom the Land is holden in Socage after the death of his tenant, shall haue reliefe in such fourme. If the tenaunt holde by Fealtie, and certaine rent to pay yearely &c. If the termes of payment be to pay by two termes of the yeare, or by foure termes of the yeare, the Lord shall haue of the heire of his Tenaunt, as much as the rent amounteth that hee should pay by yeare. As if the Tenaunt held of the

Lord

Lord by fealtie, and x. shillings of rent, payable at certaine termes of the yeare, then the heire shal pay to the Lord x.s. for reliefe aboue tenne shillings that hee shall pay for the rent. Lookes more in the Statute of Anno 29. H. 7. cap. 15. 10-S- 10-S-

And in such case after the death of the Tenant, such reliefe is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie nor the land of the heire. And the Lord in such case ought not to abide the paiment of his reliefe, after the termes and dayes of payment of the rent, but he ought to haue his reliefe incontinent: And therfore hee may incontinent distraine after the death of his tenaunt for the reliefe.

In the same maner it is, where a tenãt holdeth of his Lord by fealtie, and by a pound of Comin, or a pound of Pepper, by the yere, and the Tenant die, the Lord shal haue for his reliefe a pound of Comin, or a pound of Pepper.

In the same manner it is, where the tenant holdeth to pay by the yere a certaine nũber of Capõs or Hens, or a paire of Gloues, or certaine bushels of wheat, and such other maner things. But in some case the Lord ought to abide to distraine for his reliefe till a certaine time. As if the Tenant hold of his Lord by a rose, or by a bushell of roses, to pay at the feast of S. Iohn Baptist. If such a Tenant dye in winter, then the Lord may not distraine for

his relefe &c. vntill the time that the Woks by the course of the yeare may haue their growings &c. Et sic de similibus.

Also if any peraduenture will aske why a man may hold of his Lord by fealtie onely for all maner of seruices, insomuch, that when the tenant shall make his fealty, he shal sweare to his Lord that he shall do all seruices due, & when he hath made fealtie in such case, there is none other seruice due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoueth that he ought to doe to his Lord some maner of seruice, for if the Tenant nor his heires ought to doe no maner of seruice to his lord, nor to his heire, the by long time continued it should be out of remembrãce of whom the land was holden, of the Lord, or of his heire, or not, & then more oft & more sooner will men say, that the land is not holden of the Lord nor of his heires, then otherwise: & vpon this the Lord shall lose his Escheate of his land, or percase other forfeiture or profite that he might haue of the Land: So it is reason that the Lord & his heires haue some seruice done vnto him, for a proof & a witnes that the land is holden of them, and because fealty is incident to all maner tenures, except tenure in Frankalmoign, as shalbe sayd in Frankalmoigne, & because that the Lord will not at the beginning of the tenure haue any other seruices but fealty, it is reason that a mã may hold of his Lord only by fealty, and when he hath made

made his fealty, he hath done all his ſeruice.

Alſo if a man let to another for terme of life certaine lands or tenements, without ſpeaking of any thing to yeeld to the lellor, yet he ſhall doe to the lellor fealtie, for that he holdeth of him. And if a Leaſe be made to a man for terme of yeres, it is ſaid the leſſee ſhall doe to the lellor fealty, for that he holdeth of him. And this is proued well by the words in a writ of Waſte, when the lellor hath cauſe to bring a writ of waſt againſt him, the which writ ſhall ſay, that the leſſee holdeth the tenements of the lellor for terme of yeres: ſo that writ proueth a tenure betweene them &c. But he that is tenant at will after the courſe of the Common Law, ſhall not make fealty, becauſe he hath no maner of a liue eſtate. But otherwiſe it is of tenant after the cuſtome of the manor, becauſe that he is bound to doe fealtie to his Lord for two cauſes: One is becauſe of cuſtome, the other is, becauſe that he taketh his eſtate in ſuch forme to do fealtie.

Franke almoigne.

TEnant in Franke almoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Franke almoigne: that is to ſay in Latine, in liberam Eleemoſynam, that is to ſay, in free almes. And ſuch tenure began firſt in old time when a man in old time was ſeiſed of lands or tenements in his demeſne as of fee, and of

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the same Land enfeoffed an Abbot and his co-uent, or Prior and his Couent, to haue and to hold to them and their successors in pure and perpetuall almes, or in Frankealmoigne, or by such words, to hold of the graunter, or of the lesser and his heires in free almes: In such case the tenements were holden in Frankealmoigne. And in the same manner it is, where the Lands or Tenements were graunted in olde time to a Deane and Chapter, and to their successours, or to a Parson of a Church, and to his successours, or to any other man of holy Church, and to his successours in free almes, if he had capacitie to take such grãts or feoffements &c. And such as hold in free almes, be bound of right afore God to do Diri-sons, Prayers, and Masses, and other diuine seruices for the soules of the grantors or feoffors, or for the soules of their heires which be dead, and for the prosperitie & good life of them that be aliue.

And for this they doe at no time no manner of fealtie vnto their Lords, for that such diuine seruice is better for them before G O D, then any doing of fealtie. And also these words, free almes or frankealmoigne, exclude the lord to haue any worldly or tẽporall seruice, but only to haue diuine and spirituall seruice to be done for him &c. And if such that hold their tenements in free almes, or frankealmoigne will not, or sayle to doe such Diuine Seruice as is sayd, the Lord may not

distraine

distraine them for the services undone &c. because it is not set in certaine, what service they ought to doe: but the Lord may of them complaine to their Ordinarie, praying him that hee will set punishment and correction of that: And also to prouide es for that such negligence be no more done: And the Ordinarie of right ought to doe that &c.

But where an Abbot or a Prior holdeth of his Lord by certaine diuine seruice in certain to be done as for to sing a Masse euery friday in the weeke, for the Soules &c. or euery yeare at such a day to sing Placebo & Dirge &c. or to find a Chaplein to sing Masse &c. or to distribute in almes to an hundred poore men an hundred pence at such a day: in such case if such diuine seruice be not done, the Lord may distraine &c. for that this diuine seruice is certain by their tenure what the Abbot or the Prior ought to do. And in such case the Lord shall haue fealty &c. as it seemeth.

Diuine Services may be distrained but

And such tenure is not layd tenure in free almes, but it is said tenure by diuine seruice, for in tenure in free almes or Frankealmoigne, no mention is made of any manner certaine seruice, for none may hold in frees almes or frank almoigne if there be expressed any manner certein seruice that he ought to doe.

Frankemariage

And if it bee demaunded, if the Tenant in frankmariage shall doe Fealtie to the donour or to his heires before the fourth degree bee passed &c. It seemeth that yea, for hee is not like

like as to this intent to a tenant in free almes or frankalmoigne, for the tenant in free almes shall do (because of his tenure) diuine seruice for the Lord as it is aforesaid, and that hee is charged to doe by the law of holy Church, and for that he is excused and discharged of fealty. But tenant in frankmariage doth not by his tenure such seruice.

And if he doe not to his Lord fealty, then he doth not to his Lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritaunce of an other, and yet the Lord shall haue no maner of seruice of him as it seemeth, and so it seemeth that he shall doe fealty to his Lord vntill the fourth degree be past &c. And when he hath done fealty, hee hath done all his seruice. And if an Abbot hold of his Lord in free almes, & the Abbot and his Couent vnder their common seale alien the same land to a seculer man in fee simple, in this case the seculer man shall do fealty to the Lord, for that he may not hold of his Lord in free almes: For if the Lord ought not to haue of him fealty, then hee shall haue of him no maner of seruice which should bee an inconuenience, where hee is Lord and the tenements are holden of him.

Also if a man grant at this day to an Abbot or to a Prior, Landes or Tenements in free almes, or franke almoigne, these words free almes or franke almoigne bee doyde, for that

it is ordained by the Statute which is called Quia emptores terrarum, which Statute was made Anno 18. Regis E. primi, That no man may alien or grant Lands or tenements in fee simple to hold of himselfe, so that if a man be seised of certain lands or tenements which he holdeth of his Lord by knights service, and at this day he graunteth the same land to an Abbot &c. in free almes, or franke almoigne, the Abbot shall holde immediatly the same Tenements by knights service of the Lord of his grauntor, because of the same estatute: so that no man may hold in free almes, or in franke almoigne, but if it be by title of prescription, or by force of a graunt made to some of his predecessors before the same estatute. But the King may give Lands or Tenements in fee simple to hold in free almes or frankalmoigne, or by other service, for he is out of the case of the Statute. And note well, that no man may hold Lands or Tenements in free almes, but of the grauntor or his heires, and that for the entiertie of the gift: and therefore it is said, that if there be Lord, Meine, and Tenant, and the tenant is an Abbot that holdeth of his meine in franke almoigne, if the meine die without heire, then the meinalty shall come by escheate to the said Lord above, and the Abbot then shall hold of him immediatly onely by fealty, and that do him fealty, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of reli-

religion holdeth his lands of his Lord in fr
aimes &c. his Lord is bound by the Law t
acquite him of euery maner of seruice that an
Lord aboue him will demaund or aske of th
same Tenants. And if he acquite him not, bu
suffer him to bee distrained &c. then he sha
haue against his Lord a writ of Mesne, & re
couer his damages and costes of his suit.

Homage auncestrell.

TEnure by Homage auncestrell is, where
tenãt holdeth his Land of his Lord by ho
mage, and the same tenant and his ancestors
whose heire he is, haue held the same land
the said Lord, and of his auncestors, whos
heire the lord is, from time out of mind by ho
mage, & haue done homage vnto him. Which
called Homage auncestrell, because of the co
tinuance which hath beene by title of prescri
tion in the tenancie, in the bloud of the tenan
& also in the lordship in the bloud of the Lor
And such seruice by homage auncestrel dra
eth to it warrantie: if the Lord that is am
hath receiued homage of such Tenaunt, he
ought to warrant his tenant when he is im
pleaded of the lands holden of him by homag
auncestrell. And all such seruice by Homag
auncestrell draweth it to acquitaince, that i
to say, the Lord ought to acquite his Te
naunt against all other Lords aboue him
euerie maner of seruice. And if it is said, that
such tenant bee impleaded by a Præcipe quo
red

reddar &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh the Tenant what hee hath to binde him to warrantie, and he sheweth how hee and his auncesters, whose heire hee is, haue holden the Land of the Vouchee and of his auncestors, whose heire hee is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenaunt, nor of any of his auncestors, the Lord then, if he will, may disclaime in the Lordship, and so put out his Tenaunt of his warrantie. But if the Lord which is vouched hath receiued homage of ꝯ Tenaunt, or of any of his ancestors, then may he not disclaime, but he is bound by the law to warrant the Tenant, & then if the tenant leese the land in default of the vouchée, he shall recouer in value against the vouchée of the Lands or Tenements that the vouchée had at ꝯ time of the voucher, or at any time after.

And it is no writ, that in euerie case where the Lord may disclaime in his lordship by the Law, in Court of Record, and of that will disclaime, his seigniorie is extinct, and the tenant shal hold of the lord next aboue his lord which so disclaimeth. But if an Abbot or Prior bee vouched by force of Homage auncestrell &c. though hee haue neuer taken Homage &c. yet hee cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in fee, which hath beene vested in their house, Paschę 10. E. 4.

Also

Also if a man that holdeth his Land by homage auncestrell alieneth his Land to another in fee, the alienee shall do homage to his Lord: But hee holdeth not of his Lord by homage auncestrel, for that the tenancy was not continued in the blood of his ancestors of the alienee, nor the alienee shall neuer haue the warranty of his land of the Lord, for that the continuance of the tenancie in the tenant e in his blood by the alienation is discontinued. And so see, that if the Tenant that holdeth his land by Homage auncestrel of the Lord, and such a tenant alieneth in fee, though that he take estate of the alienee againe in fee, hee holdeth the land by Homage, but not by homage auncestrell.

Also it is sayd, that if a man hold his Land of his Lord by homage and fealtie, e hee hath made homage and fealtie to his Lord, and the Lord hath issue a Sonne and dyeth, and the Lordship descendeth to his sonne: In this case the Tenant which did Homage to the father, shall not doe Homage to his sonne, for that when a tenant hath made once homage to his Lord, hee is excused for terme of his life to make homage to any other heire of the Lord: But yet he shall doe fealty to the sonne e heire of his Lord, though that he made fealty to his father.

Also if the Lord after the Homage to him made by his tenaunt, graunt the seruice of his Tenaunt by deed vnto another in fee, and the te-

Tenaunt attorneth &c. the Tenant shal not be compelled to do homage, but he shal do fealty, though hee did fealtie before to the graunter, for Fealtie is incident to euerie attornement when the Lordship is graunted. But if a man bee seised of a Mannor, and another man holdeth his land of him as of ꝑ Manor aforesayd by homage, the which hath done homage to his Lord which is seised of the manor, if after that a straunger bring a Precipe quod reddat against the Lord of the manor, and recouereth the Manour against him, and sueth execution &c. in this case the Tenant shall once again do homage to him that recouereth the manor, for that the estate of him which receiued homage before is defeated by the recouery. And it shall not lye in the mouth of the tenant to falsifie or defeate the recouerie which was against his Lord. And so see the diuersitie in this case, where a man commeth to his Lordship by recouerie, and where hee commeth by descent, or graunt of the Seigniorie.

And if a man tenant which ought by his tenure to doe Homage to his Lord, come to his Lord and say to him, Sir, I owe to doe vnto you homage for the tenements that I hold of you, and I am readie to do you homage for the same tenemẽts, for the which I pray you that yee will now receiue it, and if the Lord then refuse to receiue it, then after such refusall the Lord may not distraine the tenant for the homage, before that the Lord require the tenant

to doe homage, and the tenant refuse to doe it.

Also a man may hold his Land by homage auncestrel, & by Escuage, or by other Knights seruice, as well as he might hold his land by homage auncestrell in Socage.

Graund Serieantie.

TEnant by Graund Serieantie is, where a man holdeth his lands or tenements of our soueraigne Lord ye King, by the seruice which he ought to do in his own proper person, as to beare the kings Banner, or his Speare, or to lead his hast, or to be his Marshal, or to beare his Sword before him at his Coronation, or to be his Bower at his Coronation, or his Carner, or Butler, or to be one of his Chamberlaines of his receit of his Exchequer, or to doe such seruices &c. And the cause wherefore such seruice is called Graund Serieantie, is for that it is more honorable, & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by Escuage, is not limited by his tenure to doe any more especiall seruice, then any other that holdeth by Escuage ought to doe. But hee that holdeth by Graund Serieantie, ought to doe some especiall seruice to the King, that hee that holdeth by Escuage ought not to doe.

Also if the Tenant which holdeth by Escuage die, his heire being of full age, if he held by a knights fee, the heire shal pay but an C.s. for his

his reliefe, as it is ordained by the Statute of Magna char. cap. 2. But he that holdeth of the king by Graund ſerieanty, and dieth his heire being of full age, ſhal pay vnto the king for his reliefe, the value of his lands or tenements by the yeere, beſides the charges & reprizes, which he holdeth of the King by Graund ſerieantie. And it is to wit, that Serieantia in Latin is ſeruitium, and ſo Magna ſerieãtia, is Magnum ſeruitium, that is to ſay, a great ſeruice.

Alſo thoſe which hold by Eſcuage ought to do their ſeruice out of the realme, but they that hold by Graund ſerieantie for the moſt part ought to do their ſeruice within the Realme.

And it is ſaid, that in the marches of Scotland ſome hold of the King by Cornage, that is to ſay, to blowe an Horne for to warne the men of the Countrey &c. when they heare that the Scots or other enemies will come to enter into England &c. which ſeruice is Graund Serieanty &c. But if any tenant hold of any other Lord then of the King by ſuch ſeruice of Cornage, that is not Graund ſerieanty, but it is Knights ſeruice, and draweth to it warde, marriage, and reliefe, for none may holde by Graund ſerieanty, but of the King onely.

Alſo a mã may ſée in the 11. yéere of Henrie the 4. fol. 27. that Cokein then beeing chiefe Baron of the Eſchequer came into the cõmõ Place, bringing with him a copy of a Record in theſe wordes, Talis tenet tantam terram de domino Rege per Serieantiam, ad inueniendũ

vnum hominem ad guerrã infra quatuor maria &c. that is to say, such a man holdeth so much land of our soueraigne Lord the King by serieantie, to find one man appointed for the warre within the foure Seas, and he demaunded whether it was Graund serieanty or petie serieantie: and Hank. then said, that it was Graund serieantie, for that it was seruice to bee done by the bodie of a man, & if that he may not find a man to doe seruice for him, hee must doe it himselfe: to whom the other Iustices assented. Cokaine then sayd, the tenant in this case shal pay reliefe to the value of the land by yeare, to the which was none answere. Nu note, that all they that hold of the king by Graund serieanty, hold of the King by Knights seruice, & the king of that shall haue ward, mariage, & reliefe, but the king shall not haue of them Escuage, if they hold not by Escuage.

Petie Serieantie.

TEnant by Petie Serieantie is, where a man holdeth his Land of our Soueraigne Lord the King, to yeild vnto him yearely a Bowe, a Sworde, a Dagger, or a Knife, or a Spere, or a paire of gloues of maile, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yeild such other small things touching the warre, and such seruice is but Socage in effect, for that that the Tenant by his tenure ought not to goe, nor to doe any thing in his owne

done proper person touching the warre. But to yeeld and pay yearely certaine things vnto the King, as a man ought to pay a rent.

And note, that no man holdeth Land by Graund serieantie, nor by Petie serieantie, but of the King.

Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the King is lord, and they that haue tenements within the Borough hold of the King their tenements, that euerie tenant for his tenement ought to pay to the King a certaine rent by yere &c. And such tenure is but tenure in focage. And the same manner is where an other Lord spirituall or tempozall is Lord of such a Bozough, and the tenants of the tenements in such a Bozough hold of their Lord to pay each of them yerely an annuell rent: and it is called tenure in burgage, for that the tenements within the Borough be holden of the Lord of the Bozough by certaine rent &c. And it is to wit, that the auncient Townes called Bozoughes be the most auncient & eldest Townes that be within England, for the Townes that now bee Cities or Counties, in old time were Boroughs, and called Bozoughes, for of such old Townes called Bozoughes, come the Burgesses of the Parliament, to the Parliament when the king hath summoned his parliamẽt

Also for the greater part, such Boroughs haue diuers customes and vsages which bee not had in other townes, for some Boroughes haue such a custome, that if a man haue issue many sonnes and dyeth, the yongest sonne shal inherite all the tenements which were his fathers within the same Borough as heire vnto his father, by force of the custome, the which is called Borough English.

Also in some Boroughes by the custome, the wife shal haue for her Dower all the tenements which were her husbands.

Also in some Borough by the custome, a man may deuise by his Testament his Lands & tenements which he hath in fee simple within the same Borough at the time of his death, and by force of such deuice, hee to whom such deuise is made after the death of the Deuisor, may enter into the tenements to him deuised, to haue and to hold to him after the forme and effect of the deuise without any suery of seisin there of to be made to him.

Also though a man may not graunt nor gine his tenements to his wife during the coueriure, for that that his wife and he be but one person in the Law, yet by such custome he may deuise by his Testament his tenements to his wife, to haue and to hold to her in fee simple, or in fee tayle, or for terme of life, or yeres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers Testaments, and

diuers

diuers deuises &c. yet the last deuise and will made by him, shall stand and abide.

Also by such custome a man may deuise by his Testament, that his executors may alien and sell the tenements that he hath in fée simple, for a certaine summe, to distribute for his almes: In this case though the deuisor die seised of the Tenements, and the tenements descend vnto his heire, yet the executors after the death of the testatour may sell the tenements so deuised, and put out the heire, and thereof make a feoffement, alienation, & estate by deed, or without deed, to them to whom the sale is made vnto.

And so may yee sée a case, where a man may make a lawfull estate, and yet he hath nought in the tenemẽts at the time of the estate made: And the cause is for that, that the custome and vsage is such, Quia consuetudo ex certa causa rationabili vsitata, probat communem Legem: For a custome vsed vpon a certaine reasonable cause, proueth the Common Law.

And note well, no custome is to be alowed, but such custome as hath béene vsed by title of prescription, that is to say, from time whereof is no mind. But diuers opinions haue béene of time out of mind, and of title of prescriptiõ, which is all one in the law, for some men haue sayd, that the time of mind should be said for time of limitatiõ in a writ of Right, that is to say, from the time of king Richard the first after the Conquest, as is giuen by the statute of

weſtminſter the firſt, for that a writ of Right is the moſt highest writ in his nature that may be. And in ſuch a writ a man may recouer his right of the poſſeſſion of his auncestors, of the moſt auncient time that any man may by any writ by the law. And in ſo much that it is giuen by the ſaid eſtatute, that in ſuch a Writ none ſhall be heard to aſke of the ſeiſin of his auncestours of more longer time, then of the time of King Richard aforeſayd, therefore this is proued, that continuance of poſſeſſion, or other cuſtomes and vſages vſed after the ſame time is title of preſcription, and this is certaine. And other haue ſaid, that well and trueth it is, that ſeyſin and continuance after the limitation &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſayd. But they haue ſaid that there is alſo another title of preſcription that was at the Common law, before any eſtatute of limitation of writs &c. And that it was where a Cuſtome or vſage, or other thing had beene vſed, for time whereof mind of man runneth not to the contrarie: And they haue ſaid that this is proued by the pleading, where a man will pleade a title of preſcription of cuſtome &c. he ſhal ſay that ſuch cuſtome hath beene vſed from time whereof the memory of men runneth not to the contrarie, that is as much to ſay, when ſuch a matter is pleded, that no man then aliue hath heard any proofe to the contrarie, nor hath no knowledge to the contrary: & in ſo much that

ſuch

such title of prescription was at the Common Lawe, and not put out by any statute, Ergo it abideth as it was at the Common Lawe, and the sooner, inasmuch that the said limitation of a Writ of Right &c. is of so long time passed. Ideo quære de hoc. And many other customes and vsages haue such ancient boroughs.

Also euerie Borough is a Towne, but not the contrarie. More shalbe said of Customes in the tenure of Villenage.

Villenage.

TEnure in villenage is most properly when a Villeine holdeth of his Lord (which he is villein) certaine lands & tenements after the custome of the Mannor, or els at the will of his lord, & to doe his Lord villein service, as to beare, bring, and carrie out the dung & filth of the Lord vnto the land of the Lord, there to lay it, call it, & spread it abroad vpon the Land, and to doe such other manner of service. And some free tenants hold their tenements after the custome of certain manors by such service, and their tenure is called tenure in villenage, and yet they be no villeines, for no Land holden by Villenage, or villein lands, or any custome rising of the Land, shal euer make a free man Villeine: But a Villeine may make free land to be villein land vnto his Lord. As if a villeine purchase Land in fee simple, or in fee taile, the lord of the villeine may enter into the land, & put out the Villeine & his heires for euer,

euer, & after the Lord (if he will) may let the same land to the villeine, to hold in villenage.

Also if a Feoffement bee made to a certaine person or persons in fee, to the vse of a Villein, or if a Villeine with other persons be infeoffed to the vse of a Villeine, what estate soeuer the villein hath in the vse, in fee taile, for terme of life, or yeares, the Lord of the Villein may enter in all those Lands and tenements, likewise as if the Villeine had bin alone seised of the demeine: And that is by the Statute of An 19, H. 7. cap 15. But if a free man will take any land[illegible] tenements of his Lord by such Villein[illegible]ice, that is to say, to pay a fine to the Lo[illegible] his marriage, or for the mariage of his sonne, or his daughter, then shal he pay such a fine for the mariage &c. for that it is the follie of such a free man, to take in such sorme Lands or Tenements to hold of his Lord by such bondage, yet that vnketh not the free mã Villeine.

Also, euery Villeine, either he is villeine by prescription, that is to say, hee and his auncesters haue bene villeines time out of mind, or he is villeine by his owne confession in Court of Record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to an other in Court of Record, yet his issues which he hath before the confession be free, but the issues which he shal haue after the confession &c. shalbe Villeines.

Also if a Villeine purchase Lands and alieneth

neth the same lands to an other before his lord enter, then the Lord may not enter, for it shall bee iudged his owne follie that hee entred not when the Land was in the Villeines hands. And so it is of his other goods, for if the Villeine buy and sell, or giue goods to an other before that the Lord seise the goods, then the lord may not seise them. But if the Lord before any such sale or gift commeth within the house of the villein where such goods be, & there openly among the neighbors claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods &c. this is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shal be taken in the law, in the right of the Lord. But if the King haue any villeine that purchaseth lands, & alieneth before that the King enter, yet the King may enter in the Land in whose hands soeuer the Land commeth. Or if the villeine buy or sell diuers goods before that the Kings seise the goods, yet the King may seise them in whose hands soeuer they be, Quia nullum tempus occurrit Regi, for no time runneth against the King.

Also if a man let Land to an other for terme of life, saying the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the Villeine may incontinent come to the Land, and claime the same reuersion as Lord of the same Villeine, and by this claime,

the

the reuersion is incontinent in him, for in any other forme he may not come to the reuersion, for he may not enter vpon the tenant for terme of life: And if hee ought to attend till after the death of the tenant for terme of life, then happely hee might come too late, for peraduenture the Villeine will graunt or alien to an other in the life of the tenant for terme of life. In the same maner it is where a villeine purchaseth the Aduowson of a Church full of an incumbent, that the Lord of the villeine may come to the sayd Church and clayme the Aduowson. And by this clayme the Aduowson is in him, for if he abide till after the death of the incumbent, and then present his Clerke to the sayd Church: Then in the meane time the villein might alien the Aduowson &c. and so put out the Lord from his presentation.

Also there is a villeine regardant and a villeine in grosse. Villeine regardant is as if a man be seised of a Manour, to which a villein is regardant, and he that is seised of the sayd Manour, or they whose estate he hath in the same Manour haue been seised of the sayd villeine and of his auncestors as villeines regardant to the Manour from time out of mind. And villeine in grosse is where a man is seised of a Manour, to the which a villeine is regardant, & graunteth the same villeine by his deede vnto an other, then hee is Villeine in grosse, and not regardant.

Also if a man and his auncestours whose

heire

heire he is, haue been seised of a Villeine and of his auncestors, as villeines in grosse time out of minde, such beene Villeines in grosse. And note well, that of such thinges which may not bee graunted nor alened without deede or fine, a man that will haue such things by prescription may not otherwise prescribe but in him, and his auncestors whose heyre he is, and not by these wordes, in him and whose estate hee hath, for that that hee may not haue their estate without deede or writing, the which behoueth to be shewed to the Court, if hee will haue any aduauntage of this: and because that the graunt and the alienation of a Villeine ieth not without deede or other writing, a man may not prescribe in a villeine in grosse without shewing of writing, but in himselfe that claymeth the Villeine, and in his auncestors whose heire he is. But of those things which bee regardant or appendant to a Manour, or to other Lands or Tenements, a man may prescribe that he and they whose estate hee hath were seised of the Manour, or such Lands or Tenements, as regardants or appendants to the Manour, or to such Lands or tenements &c. from time out of minde: and the cause is for this, that such a Manour, Lands and tenements, may passe by alienation without deeds &c. And it is to wit, that nothing is named regardant to a Manour but a Villeine. But certaine other things, as Aduowsons and

Com-

Common of pasture &c. be named appendants to the Manour, or to other Land and Tenements.

Also if a man in Court of Record knowledge himselfe to bee Villeine that neuer was villeine before, such one is villeine in grosse.

Also, a man that is Villeine is called Villeine, and a woman that is Villeine is called Niefe. And a man that is outlawed is called an Outlaw, and a woman that is outlawed is called a Waife.

Also if a villein take a free woman to wife, the issue betweene them shall be villeine. But if a Niefe take a free man to Husband, their issue shall be free. And that is contrarie to the Lawe Ciuill, for there is said, that partus sequitur ventrem.

Not sytthetou

Also no Bastard may bee Villeine, but if that hee will knowledge himselfe to bee Villeine in Court of Record, for hee is in the Lawe, quasi nullius filius, as the sonne of no man, for that hee may bee inheritour to no man.

Bastard

Also euery villeine is able and free to sue all manner of actions against euery person, except against his Lord to whom he is Villeine: and yet in certaine things hee may haue against his Lord an action, as of Appeal for the death of his father, or of his other ancestours whose heire hee is. Also a Niefe which is rauished by her Lord may haue Appeale of Rape against him.

Also

Also if a Villeine bee made Executor to an other, and the Lord of the villeine was indebted to the testator in a certaine summe of money, the which is not payed: In this case the villeine as executor to the testator, shall haue an action of Det against his Lord, because he shall not recouer the debt to his proper vse, but to the vse of the testator.

Also the Lord may not take out of the possession of such a Villeine, that is Executor, the deads goods, and if he doe, the Villeine as Executor shall haue an action of Trespas against his Lord for the same goods so taken, and recouer damages to the vse of the testator. But in all these cases it behoueth the Lord (which is defendant in such actions) to make protestation that the plaintife is his villein, or else the Villeine shall be infranchised, though the matter be found for the Lord against the Villeine, as it is said.

Also if a Villeine sue an action of Trespas, or other Action against his Lord in one shire, and the Lord sayth, that hee shall not be answered, for that he is Villeine regardant to his Manour in another Shire, and the playntife sayth, that he is franke and of free estate, and no Villeine, this shall bee tried in the Shire where the plaintife hath conceiued his Action, and not in the Shire where the Manour is, and this is in fauour of liberty, as it is adiudged Mich. 40. of Edward the third.

And

And for this cause was made a statute in the ninth yere of Richard the second, the tenour of which inlueth in such forme.

Also for that, where many Villeines and Nieues, as well of great Lords as of other folke spirituall & temporall, flie and goe into Cities and places franchised as the Citie of London, and other like places, and faine diuers suites against their Lords, because they would make themselues to be infranchised, it is accorded and assented that the Lords, nor none other shalbe forebarred of their villeines, because of their answer in the law. By force of which Statute, if any villeine will sue any maner of action to his owne ble in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to make protestation that he is his villeine, and to pleade another matter in bar, and if they be at issue, & the issue bee found for the Lord, then the Villeine, is Villeine as hee was before, by force of the same Statute: But if the issue be found for the Villeine, then is the villeine franke & free, for that the Lord toke not for his plee, that the villeine was his villeine, but toke it by protestation.

Also the Lord may not mayme his Villeine, for if he mayme his Villeine, hee shall of that be indicted at the Kings suit. And if hee be of that attainted, he shal for that make grieuous fine and ransome to the King. But it seemeth that the villeine shall not haue by the

Law

lawe any appeal of Mayme against his Lord, for in appeale of Mayme a man shal not recouer but his damages. And if the Villeine in that case recouer damages against his Lord, and hath thereof execution, the Lord may take that that the Villeine hath in execution from the Villeine, and to the recouerie shall with both.

Also if the villeine be demandant in an action reall, or plaintife in an action personall against his Lord, if the Lord will plead in disabilitie of his person, he may not make plaine defence, but he shall defend but the wrong and the force, and demaund iudgement if hee shall bee answered, and shew his matter by and by how hee is Villeine, and demaund iudgement if he shall be answered.

Also, fiue manner of men there bee against whom if they sue actions &c. iudgement may bee asked if they shall bee answered: One is, where the Villeine sueth an action &c. against his Lord, as in case aforesaid. The second is, where a man is outlawed upon an action of det or Trespas, or upon any other action or Indictment, the Tenant, or the Defendant may shew all the matter of the Record and the outlawrie, and demaund iudgement if hee shall be answered, because that he is out of the lawe to sue an action during the time that he is outlawed. The third is, where an alien borne out of the allegeance of our Soueraign Lord the King, if such alien sue an action real or per-

personall, the tenant or defendãt may say, that he was borne out of the kings allegeance, and aske iudgement if he shall bee answered. The fourth is, where a man by iudgement giuen against him vpon a writ of Præmunire facias, &c. is out of the Kings protection, if he sue any action, & the tenant or defendant shew all the Record against him, he may aske iudgement if he shall be answered, for the Law & the kings writs be the things by which a man is protected and holden, and so during the time that a man in such case is out of the kings protection, hee is out of helpe and protection by the Kings Lawe, or by the Kings writ. The fift is, where a man is entred and professed into Religion, if such a person sue an action, the tenant or defendant may shew that such a one is entred into Religion in such a place, into the order of Saint Benet, and is there a Monke professed, or in the order of Friers Minors or Preachers, and is there a Frier professed, and so of other orders of religion &c. and aske iudgement if he shalbe answered, and the cause is this, that when a man entreth into Religion, and is professed, hee is dead in the Law, and his sonne or next cosin incontinent shall inherite him, as well as though hee were dead indeed, & when he entreth into Religion, he may make his Testament & his executors, and they may haue an action of det due to him before his entrie into religion, or any other action that executors may haue, if he were dead

in

in deed. And if he make none executors when hee entreth into Religion, then the Ordinary may commit the administration of his goods to other, as if he were dead in deed. The sixt is, where a man is accursed by the Lawe of holie Church, & he sueth an action real or personall, the tenant or defendant may plead that he that sueth is accursed, & of this it behoueth him to shew the Bishops Letters vnder his seale, witnessing the accursing, and aske iudgment if he shalbe answered &c. but in this case if the demaundant or plaintife cannot deny it, the writ shal not abate, but the iudgement shal be, that the tenant or defendant shall goe quite without day, for this, that when the demandant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a Resummons or a Reattachment vpon his originall, after ye nature of his writ &c. But in the other cases the writ shal abate &c. if the matter shewed may not be gainsaid.

Also if a Villeine be made a secular Priest, yet his Lord may seise him as his villeine, and seise his goods &c. But it seemeth, that if the villeine enter into religion and is professed &c. that the Lord may not take him, nor seise him, for that he is dead in the Law: And no more then if a free man take a Niefe to his wife, the Lord may not take nor seise the wife of the husband: But his remedie is to haue an action against the husband, for that hee tooke his Niefe to wife without his will,

and so may the lord haue an action against the Souereigne of the house that taketh & admitteth his villeine to be professed in ꝑ same house without licence and will of his Lord &c. and shall recouer his damages to the value of the villeine, for he that is professed Monke &c. shal be a Monke, as a Monke shall be taken for terme of his life naturall, except he be deraigned by the Law of the holy Church, and he is holden by his religion to keepe his cloister, and if the Lord may take him out of the house, there should not liue as a dead person, nor after his religion, which should be inconuenient &c. For if there be Warden in Chiualry of bodie and Lands of a childe within age, if the childe when he commeth to the age of xxi. yere enter into Religion & is professed, the warden hath none other remedy, as to the ward of the body, but a writ of Rauishment of Ward against the Souereigne of the house. And if any being of full age, that is cosin and heire vnto the child ender into the Land, the warden hath no remedie as to the ward of the Land, because that the entrie of the heire of the childe is lawfull in such case.

Also in many other cases the Lord may make Manumission and infranchising to his Villeine. Manumission is properly when the Lord maketh his deed to his villeine to infranchise him by this word Manumittere, which is as much to say, as extra manum, & extra potestatem alterius ponere, as to put him out of

of the hands and the power of an other. And for this that by such a deed the Villeine is put out of the hand and power of his Lord, it is called Manumission. And so euerie maner of infranchising made to a villeine, may be said a Manumission. Also if the Lord make to his Villeine an Obligation for a certaine summe of money, or graunt vnto him by his deede an annuitie, or let him by his deed, lands or tenements for terme of yeares, the villeine is infranchised. And if the Lord make a fosfement to his villeine of any Lands or Tenements by deede, or without deede, in fée simple, or fée taile, or for terme of yeares, and deliuereth vnto him the seisin, this is an infranchising: But if the Lord make to him a Lease of Lands or Tenements to hold at the will of the Lord, by deede, or without deed, this is no infranchising, for that he hath no maner of certaintie nor surety of his estate, but that the Lord may put him out when he will. Also, if a Lord sue against his villeine a Præcipe quod reddat, if hée recouer, or be nonsuit after apparance, this is manumission, for this that hee may lawfully enter into the land without such suit. In the same manner it is if hee sue against his Villeine an action of Dette, or of Accompt, or of Conenant, or of Trespas, or such other, this is an infranchising &c. for this that he may imprison his villeine, & take his goods without such suit. But if the Lord sue his Villein by Appeale of Felonie, this is

none infranchising to the Villeine, though the matter of the appeal is found against the lord, because that the lord may not haue the villeine hanged without such suit. But if the Villeine were not indicted of the same felony before the appeal sued against him, and is acquitted of the felonie, so that he recouer damages against the lord for the false appeal: Then in this case the villein is infranchised, because of the iudgemēt of damages that was giuē to him against his Lord. And more cases & matters there be by ꝑ which a villeine may be infranchised against his Lord, Sed de illis quære. Also if a Lord of a Manor wil prescribe that it hath bin accustomed within his manor, time out of mind, that euerie Tenant within the same Manor that marieth his daughter to any man without licence of the Lord of the manor shall make fine to the Lord for the time being, this prescription is void, for none ought to make such fines but onely Villeines, for euerie free man may freely marry his daughter to whom it pleaseth him and his daughter. And because that this prescription is against reason, such prescription is void. But in the shire of Kent, of lands holden in Gauelkind, where by the custome vsed time out of mind, the childrē males ought euenly to inherite, this custome is allowable, for this that it is with some reason, because that euerie Sonne is as great a Gentleman as the elder Son, and because of that to more great honour and valure shall growe, then if he

he had nothing by his anceſtors, where peradventure he might not ſo grow &c.

Alſo, where by the cuſtome called Borough Engliſh, in ſome Borough the yongeſt ſonne ſhal inherit all the tenements &c. this cuſtome alſo ſtandeth with reaſō, becauſe that the yonger ſonne if her lacke father and mother, (becauſe of his yong age) may leaſt of all his brethren helpe himſelfe &c. But if a man will preſcribe, that if any cattel were vpon ẏ demeans of his manor, there doing damage, ẏ the Lord of the Manor for the time being hath vſed to diſtraine them, & the diſtres to retaine till fine were made to him for the damages at his will, this preſcription is voyd, becauſe it is againſt reaſon, that if wrong be done any man, that he thereof ſhould be his owne Judge, for by ſuch way if he had damages but to the value of an halfpenie, he might aſſeſſe & haue therefore an C.l. which ſhould be againſt all reaſon. And ſo ſuch preſcription, or any other preſcription vſed, if it be againſt all reaſon, this ought not, nor will not be allowed before Judges, Quia malus vſus abolendus eſt.

Rents.

THree manner of Rents there be, that is to ſay, Rent ſeruice, Rent charge, and Rent ſecke. Rent ſeruice is, where a man holdeth his land of his Lord by fealtie & certain rent, or by other ſeruice, and certaine rent, or by homage, fealtie, and certaine rent, and if rent

seruice at any day that it ought to be payd, be behinde, the Lord may distraine for that of common right. And if a man now will giue Lands or tenements to another in the taile, yeelding to him certaine rent by the yeare, he of common right may distraine for the rent behinde, though that such gift were made without deede, because that such rent is rent seruice: But in such case where a man vpon such a gift or graile, will reserue to him rent seruice, it behoueth that the reuersion of the Lands or tenements be in the donor, or in the lessor: for if a man will make a feoffement in fee, or will giue Lands in the taile, the remainder ouer in fee simple, without a deede, referring to him certaine rent, such referring is void, because that no reuersion is in the Donour, and such a tenant holdeth his land immediatly of the Lord of whom his donor held. And this is by force of the statute of Westminster the 3. cap. 1. Quia emptores terrarum, for, before the same statute, if one made a feoffement in fee simple by deede, or without deede, yeelding to him, or to his heires certaine rent, this was rent seruice, and for this he might distraine of common right: And if he made no reseruation of any rent, nor of any seruice, yet the feoffee held of the feoffor by such seruice, as the feoffor held ouer of his Lord next aboue. But if a man by deede indented at this day, make such a gift in the taile, the remainder ouer in fee, or feoffement in fee, and by the same In-

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denture reserueth to him and to his heires a certaine rent, and that if the rent be behind, that it shall be lawfull to him and to his heires to distraine &c. such rent is rent charge, because such lands and tenements be charged of such distresse by force of the writting only, and not of common right. And if such a man in such a deed indented, reserue to him and to his heires certaine rent, without any such clause set or put in the deed, that he may distraine &c. that such rent is rent secke, because that hee cannot distraine to haue the rent if it be denied by the same distresse, and if he were neuer seised in this case of the rent, he is without remedie, as it shalbe said hereafter.

Also if a man seised of certaine land, graunt by his deed Poll, or by Indenture, a perely rent issuing out of the same Land to another in fee simple, or in fee taple, or for terme of life &c. with clause of distresse &c. then that is rent charge, and if it be without clause of distresse, then is it rent secke. And note well, that rent secke, idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man grant by his deed rent charge to another, & the rent is behind, the grauntee may chuse if hee will sue a writ of annuitie of the graunter, or distraine for the rent behind, and the distresse to withhold till he bee of that paied. But he may not doe & haue both together, for if he take a writ of annuitie, then the land is discharged, and if he sue not a writ

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of annuity, but diſtraine for the arrerages, and the tenant ſueth a Replegiare &c. and the grantee auoweth the taking of the diſtreſſe in the Land &c. in Court of Record, then is the land charged, and the perſon of the grantor diſcharged of an action of Annuitie.

Alſo, if a man will that another ſhall haue a rent charge iſſuing out of his Lands, but hee will not that his perſon ſhalbe charged in any manner by a writ of Annuitie, then he may haue ſuch clauſe in the end of his deed, Prouiſo ſemper quod preſens ſcriptum nec aliquid in eo ſpecificatum, non aliqualiter ſe extendat ad onerandum perſonam meam per breue de Annuali redditu, Sed tantummodo ad onerandum terrã & tenementa predicta, de annuali redditu predicto, and then is the land charged, and the perſon of the graunter diſcharged.

Alſo, if a man make ſuch a deed in ſuch maner, that if A. of B. be not yearely paid at the feaſt of Chriſtmaſſe for terme of life, xx. s. of lawfull mony, that then it ſhalbe lawfull to the ſaid A. of B. to diſtraine for it in the manor of F. &c. this is a good rent charge, becauſe that the manor is charged of the rent by way of diſtreſſe: and yet the perſon himſelfe that made ſuch a deed is diſcharged in this caſe of an action of annuity, becauſe that he graunted not by his deed any annuitie to the ſaid A. of B. but grãted only y^t he may diſtrain for his annuity.

Alſo, if a man haue a rent charge to him and to his heires iſſuing out of certain Land,

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if he purchase any parcell of the Land to him and to his heires, all the rent is extinct and annulled, because that rent charge may not in such maner be apportioned: but if a man that hath rent seruice purchase parcell of the land whereof the rent is, this shall not extinct all, but for the portion, for that rent seruice in such case may be apportioned, and shall be apportioned after the value of the Land: But if a Tenaunt hold his Land by seruice to yeld to his Lord yearely at such a feast an Hozle, or an Haube, or such thing semblable, if in such case the Lord purchase parcell of the land, the seruice is gone, because that such seruice may not be severed nor apportioned. But if a man hold his Land of another by Homage, fealti:, and escuage, and by certaine rent, if the Lord purchase parcell of the Land &c. in that the rent shall be apportioned, as is aforesaid, but yet in this case the homage and fealty abideth whole to the Lord, for the Lord shall haue the homage and fealty of his Tenant for the remnant of Lands and tenements holden of him as hee had before &c. for this that such seruices be no annuell seruices, and may not be apportioned: But the Escuage may and shall be apportioned after the quantitie and rate of the land.

Also if a man haue a rent charge, and his father purchaseth parcell of the tenements charged in the fee, and dyeth, and that parcell descendeth to his son that hath the rent charge, now this

this rent charge shall be apportioned after the value of the Land, as is aforesaid of rent service, because that such a portion of the Land purchased by the father, commeth not to the sonne by his owne deede, but by discent and course of the Law.

Also if there be Lord and Tenant, and the tenant holdeth of his Lord by fealtie and certeine rent, and the Lord graunteth the rent by his deed to another &c. reserving to him the fealtie, and the tenant attourneth to the grauntee of the rent, now such rent is rent seeke to the grauntee, for this that the tenements be not holden of the grauntee of the rent, but bee holden of the Lord that reserved to him fealtie. And in the same manner it is where a man holdeth his Land by homage, fealty, and certaine rent, if the Lord grant the rent, saving to him the homage, such rent after such grant is rent seeke. But where Lands or Tenements bee holden by homage, fealtie, and certaine rent, if the Lord will graunt the homage of his land by his deed to another, saving to him the remnant of the services, and the tenant attourneth to him after the fourme of the graunt, now in this case the Tenant holdeth his land of the grauntee: and the Lord that graunteth the homage, shal not have but the rent as rent seeke, and shall never distraine for the rent: for this, that neither homage, nor fealtie, nor elenage, may be said seeke, for he that hath or ought to have of his tenaunt homage, or fealtie, or

elenage,

escuage, may of common right distraine for it if it be behind, for homage, fealtie, and escuage been seruices by which lands and tenements be holden, and been such ẏ in no maner may be taken but as seruices. But otherwise it is of rent that was once rent seruice, for this that when it is seuered &c. by the grant of the Lord from the other seruices, it may not be said rent seruice, for this that it hath not to it fealtie which is incident to euery manner of rent seruice, and for this it is said rent secke.

Also if a man let Land to another for terme of life, reseruing to him certaine rent, if he graunt the rent to an other, sauing to him the reuersion of the Land so letten by his deed &c. such rent is but rent secke, for this that the grauntee hath nothing in the reuersion of the land. But if he grant the reuersion of the land to another for terme of life, and the tenant attourneth &c. then hath the grauntee the rent as rent seruice, because he hath the reuersion for terme of life. And so it is to be vnderstood that if a man giue Lands or Tenements in the tayle, reseruing to him and to his heires certaine rent, or let land for terme of life, reseruing certain rent, if he graunt the reuersion to an other, and the Tenant attourneth, al the rent and seruice passeth by the word of the graunt of reuersion, for this that all the rent and seruice in such case bee incidents to the reuersion, and passe by the grant of reuersion. But though hee graunt the rent to an other,

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the reuersion passeth not by such graunt &c. And so note well the diuersitie. And so it is holden Paschæ 12. E 4. f. 2. But it is adiudged An. 26. Lib. Ass. pl. 38. 39. whereas the seruices of the tenant in tayle were graunted, that that was a good graunt, yet notwithstanding the reuersion remaines.

Not. Lyttleton & Coke says not law being contra opinionem multorum & reversed on a writ of error

Also if there be Lord, mesne, and Tenant, and the Tenaunt holdeth of the mesne by the rent of fiue shillings, and the mesne holdeth ouer by xij. pence, if the Lord aboue purchase the tenancie in fee, then the seruice of the mesnaltie is extinct, for this, that when the Lord aboue hath the tenancy, he holdeth of the Lord next aboue him. And if he ought to hold it of him that was mesne, then he should hold one selfe tenauncie immediatly of diuers Lords, which should be inconuenient, and the Lawe will sooner suffer a nuschiefe then an inconuenience, and for this the seigniorie of the mesnalty is extinct. But insomuch that the Tenaunt held of the mesne by fiue shillings, and the mesne held but by xij. pence, so that hee had more aduantage by 4. shillings, then hee payed to his Lord, he shall haue the said foure shillings as rent secke yearely of the Lord that purchased the tenancie.

Also if a man that hath Rent secke, is once seised of any parcell of the rent, and after if the Tenaunt will not pay the rent that is behind, this is his remedie: It behoueth him to goe by himselfe, or by an other,

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to the lands and tenements, whereof the rent is issuing, and there to demaund the arrerages of the rent. And if the tenant denie to pay it, this denying is a disseisin of the rent. Also, if the tenant at the time be not readie to pay it, this is a denying and a disseisin. Also, if the Tenant, nor none other be dwelling vpon the lands or tenements when he asketh the arrerages &c. this is a denying in Law, and a disseisin in deede: and of such disseisins hee may haue an action of Nouel disseisin against the tenant, & recouer the seisin of the rent, and the arrerages, and his damages and costes of his writ, and of his plea &c. And if after such recouerie the rent be another time denied him, then he shall haue a Redisseisin, and recouer double damages.

And it is to be had in mind, that this name Assise, is Equiuocum, for sometime it is taken for a Iurie, for in the beginning of the record of Assise of Nouel disseisin, the record shall begin thus, (Assisa venit recogn') which is to say, that Iuratores ven' recogn', and the cause is for this, that by the writ of Assise is commanded to the Shrife, Quod faciat xij. liberos & legales homines de vicineto &c. videre ten'tum illud, & nomina eorum imbreuiare, & quod summon' eos per bonos summon' quod sint coram Iusticiarijs &c. parat' inde facere recognitionem &c. And for this, that by force of such an originall writ, a Panel by force of the same writ ought to be returned &c. it is

said

sayd in the beginning of the Record in Assise, Assisa venit recogn' &c. Also in a writ of right it is commonly said, that the tenant may put him in God and in the great Assise &c. Also there is a writ in the Register called, De magna Assisa eligenda: so is this a good proofe that this name Assise is sometime put for the Jurie, and sometime it is taken for all the writ of Assise, and after that intent it is most properly and most commonly taken, as Assise of Nouel disseisin, is taken for all the writ of Assise of Nouel disseisin: In the same maner Assise of common of pasture, is taken for all the writ of assise of common of pasture, and assise of Mordauncester, and Assise of Darraine presentment &c. But it seemeth that the cause why such writs at the beginning were called Assises, is for this, that by vertue such writ it is commanded to the Shirife, that he summon xij. &c. which is as much to say, that he ought to summon a Jurie &c. and sometime Assise is taken for an ordinance, for to set certain things in a certaine rule and disposition, as an ordinance that is entred in the auncient estatutes is called Assisa panis & cervisiæ.

Also if there be Lord & tenant, & the Lord graunteth the rent of his tenant by deede to an other, saving to him the other services, and the tenant attourneth, that is a rent seche, as it is aforesayd: But if the rent be denyed him at the next day of payment, hee hath no remedie, for this that he had not thereof any possession:

But

But if the Tenant when he attourneth to the graunter, or after, will giue a penie, or a halfe penie to the grantee in name of seisin of rent, then if after at the next day of paymēt the rent be denyed him, he shall haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deed a perely rent issuing out of his land to an other &c. if the grauntor then after pay to the grantee a penie, or an halfe penie, in the name of seisin of the rent, then if after the first day of payment the rent be denied, the grauntee may haue an Assise, or else not.

Also of rent seeke a man may haue an Assise of Mordaunceſter, or a writ of Aiel, or Cosinage, & all other maner of actions reals, as the case lieth, as he may haue of any other rent.

Also there be three causes of disseisin of rent seruice, that is to say, Rescous, Repleuin, and Enclosure. Rescous is, when the Lord distraineth in the land holden of him for his rēt behind, if the distresse be rescued from him, or the Lord come vpon the land, and would distrain, and the tenant, or another man will not suffer him &c. Repleuin is, when the Lord hath distrained, and Repleuin is made of the distresse, by writ, or by plaint &c. Enclosure is, if the lands and tenements be so enclosed, that the Lord may not come within the lands and tenements for to distrain. And the cause why such things so done be disseisins made to the Lord is for this, that by such things the Lord is disturbed of ꝑ meane by which he ought to

haue come to his rent. And foure causes be of disseisin of rent charge: that is to say, Welcome, Replevin, Enclosure, and Denier, for denying is a disseisin of rent charge, as it is aforesaid of rent secke. And two causes be of disseisin of rent secke: that is to say, Enclosure, & Denier. And yet it seemeth that there is another cause of disseisin of all the three rents aforesaid, that is, when the Lord is going to the land holden of him for to distraine for the rent being behinde, the Tenant hearing this, encountreth him, and forstalleth him the way with force and armes, and menaceth him in such forme, that he dare not come to the Land to distraine for his rent behinde &c. for doubt of death, or bodily hurt, this is a disseisin, for this, that the Lord is disturbed of the meane wherby he ought to come to his rent. And so it is if by such forestalling and menacing, hee that hath rent charge, or rent secke is forestalled, or dare not come to the land to aske the rent behind.

The third Booke.

Parceners.

241 PArceners be in two manners: that is to say, Parceners after the course of the Common Lawe, and Parceners after the custome. Parceners after the course of the Common Lawe, be where a man or woman is seised of certain lands or tenements in his demple, or fee tatle, and hath none issue but daugh-

daughters and dyeth, & the tenements descend to the daughters, and the daughters enter into the lands & tenements so to them descēded, then they be called Parceners, and be but one heire to their auncestor, and they be called parceners, for this, that by the writ that is called Breue de participatione facienda, the law will constraine them that participation shall bee made among them, & if there be 4. daughters to whom the land descendeth, then they be called two parceners, and if they be 3. daughters, they be called 3. parceners, and 4. daughters 4. parceners, and so forth. And if a man seised of lands in fee simple, or fee taile, dye without issue of his body, & the tenemēts descend to his sisters, they be parceners as is aforesaid. In the same maner it is, where he hath no sisters but the land descendeth to his Aunts, they be parceners. But if a man hath but one daughter, she may not be said parcener, but daughter and heire. And it is to wit, that partition betweene parceners may be made in diuers maners: One is when they agree to make partition, & make partition of the tenements, as if there be 2. parceners, to diuide betweēn thē the tenement in 2. parts, euery part by himselfe in seueralty of euen value, & if there be 3. parceners, to diuide the tenements in 3. parts in seueralty. And other partition there is to chuse by agreement between them, certaine of their friends to make the partition betweene thē of the lands & tenements in the forme aforesayd.

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In ed original "Et quanque filles ils sont, ils sont parceners, & font forsque un heir a lour auncestor." — Co. Litt. 163. b.

And in such cases after such partitions the eldest daughter shall chuse first one of the parts so diuided, which shee will haue for her part. And then the second daughter after her another part &c. if it so be that there be many Sisters; if it be not that they be otherwise agreed betweene them, for it may be agreed betweene them, that one of them shall haue such Tenements, and an other such tenements &c. without any such first election, and the part that the elder Sister hath, is called in Latin Initia pars. But if the Parceners agree that the elder sister shal make partition of the tenements in the forme aforesaid, & if shee doe, then it is sayd that the elder sister shal chuse the last part after each of her other sisters. An other partition and allotting there is: as if there be 4. Parceners, and after such partition made of the lands, euery part of the land is by it self written in a little scrowle, & it is couered all in waxe, in manner of a little ball, so that no man may see the scrowle, then are the foure balls of waxe put in a Bonet to keepe in the hands of an indifferent man, and then the elder daughter first shall put her hand in the bonet, which shall take a ball of waxe, & the scrowle within the same ball for her purpartie. And then the second Sister shall put her hand in the bonet, and shall take an other. And so then the third sister & third ball &c. And in this case it behoueth each of them to hold them to their chance and allotment.

Also

Also an other partition there is, as if there be foure Parceners, and they will not agree that partition shalbe made between them, then one of them may haue a writ de Participatione facienda against the other three sisters, or two may haue a writ of Participatione facienda against the other, or they three against ỹ fourth, at their election, and when iudgement shall be giuen vpon such a writ, the iudgement shall be such, that partition shall be made betweene the parties, and the Shirife in his proper person shall go to the Lands and Tenements &c. and there he by the oath of xij. true men his bayliwike &c. shall make partition betweene the parties, the one part of the same lands shall be assigned to the plaintife, or to one of the plaintifes, and an other part to another &c. not making mention in the iudgement of the eldest sister more then of the yongest, and of the partitiõ that he hath thus done, he shall make notice to the Iustices &c. vnder his seale, and the Seales of thayr. &c. And so in this case may you see, that the elder sister shall not haue the first election &c. But the Shyrife shall assigne the part that shee shall haue &c. and it may bee that the Shirife will assigne the first part to the yonger sister, & the last part to the elder.

And note well, partition by agreement betweene Parceners may by the Law be made among them, as well by word without deede, as by deede.

Also, if two meases descend to two Par-

ceners, and the one mease is worth by yeare xx.s. & the other but x.s. by yeare, in this case partition may be made betweene them in such forme, that the one parcener shall haue the one mease, and the other Parcener shall haue the other mease, and shee that shall haue the mease of xx.s. and her heires shall pay a yeerely rent of v.s. issuing out of the same mease to the other Parcener, and to her heires forever, because that every of them shall haue even in value, & such partition made, is good enough, and the same Parcener that shall haue the rent of v.s. and her heires may distraine for the rent of commō right in the same mease of the value of xx.s. if the rent of v.s. be behind at any time in whose hands soever the same mease commeth, though there was never writing made of it betweene them. In the same manner it is of partition of all maner of Lands and tenements &c. where such rent is reserued to one, or to diuers Parceners vpon such partition &c. but such rent is not rent seruice, but rent charge, of common right had and reserued for egality of the partition. And note well that none be called Parceners by the Common Law, but women or the heires of women, and which come by Landes and Tenements by descent, for if sisters purchase lands or Tenements, of this they be called Iointenaunts and not Parceners. Also if two parceners of Land in fee simple make partition betweene them &c. And the part of the one

valueth

haineth much more then the part of the other, if they were at the time of partition of ful age, that is to say, of 21. yeares, then they alway shall abide and neuer be defeated: But if the Tenements whereof partition is made, be to them in fee taile, and the part that the one hath is much better in yerely value then the part of the other, howbeit that they be excluded during their lines to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dyeth, the issue may disagree to the partition, & enter, & occupie in common that other part that is allotted to her Aunt, & so the Aunt may enter and occupie in common the other part allotted to her Sister, as if no partition thereof had beene made &c.

Also, if two Parceners of tenements in fee take husbands, and they and their husbands make partition betweene them, if the part of the one be lesse in yerely value then the part of the other, during the lines of the husbands the partition shall be in his force and strength: yet after the death of the husband the wife that hath ye lesse part may enter in her sisters part, as it is aforesayd, & defeat the partition: But if the partition so made betweene them were such, that euerie part at the time of allotment were egall of yerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, & the younger of them be within the age of xxj. yeares, & partition is made betweene them, so that the

part that is allotted to the younger, is lesse in value then the part of the other: In this case the yonger during the time of his nonage, and also when she cometh to full age of 21. yeres, may enter in the portion to her lotte allotted, &c. and defeat the partition: But such a parcener ought to take heede when she commeth to full age, that she ne take to her owne vse, all the profits of the tenements to her allotted, for by that she agreeth to the partition at such age, in which case the partition shall stand and abide in his force and strength &c. but peraduenture the profits of the halfe she may take, leauing the profits of the other halfe, to her Sister &c. It is to wit, that when it is said males and females be of full age, that shall be vnderstood of the age of 21. yeares: for if any feoffement or graunt, release, confirmation, obligation, or any other writing before any such age bee made by any of them &c. or that any within such age bee Baylife or Receiuer with any man &c. all serueth for nought & may be auoyded. Also a man before such age shall not be sworne in no Iurie, nor no inquisition.

Also if tenements be giuen to a man in the tayle, which hath as much land in fee simple, and hath issue two daughters and dyeth, and the daughters make partition between them, so that the lands in fee simple be allotted to the younger daughter, in allowance of the Tenements tayled, allotted to the elder daughter, if after such partition the younger daughter alie-

giueth the Land in fee simple to an other in fee, and hath issue a sonne, or a daughter, and both, the issue may enter in the Tenements tayled, and them hold in purparte with their Aunt, and this is for two causes: One is for that that the issue may haue no remedy of the Land alienedby the mother, for that the land came to her in fee simple, and inasmuch as he is one of the heires in the taile, and hath nothing recompenced of that that to him belongeth of the tenements tayled, it is reason that he haue his purparte of the land in tayle, and namely when such partition maketh no discontinuance of the taile, as shalbe said hereafter in the chapter of Discontinuance. But the contrary is holden M. 20. H. 6. fol: 13. that is to say, that he may not enter vpon the parcener that hath the land tayled, but is put to his suite by writ of Formedon. An other cause is, for that it shall be counted the folly of the elder sister, that shee would agree to the partition, where shee might haue had halfe the land in fee simple, and halfe of the tenements in the taile for purparte, and so to be sure without damage &c.

Not Lyttleton + not Law being also in the Case quoted a mere dictum

Also if a man seised in a plough land by iust title, disseiseth an infant within age of another plough land, & hath issue two daughters, and dieth seised of both those plough lands, the Infant then being within age, and the daughters enter & make partition, & the one plough land is allotted for the purparty of the one, as percase to ye yonger sister in allowāce of the other

plough

plough land which is allotted to the purparty of the other, so that after the Infant entreth in the plough land of the which he was diffeised, upon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her: But if the yonger sister alien the same plough land to another in fee simple before the entrie of the Infant, and after the childe entreth upon the possession of the alienee, then she may not enter into the other plough land, for this that by her alienation she hath utterly disanulled her selfe to have any part of the tenements as parcener: But if the younger sister before the entrie of the Infant make thereof a Lease for terme of yeares, or for terme of life, or in fee tayle, saving the reuersion to her, and after the childe entreth, there peradventure it is otherwise, for this, that she disanulleth not her selfe of all that, that was in her, but hath reserued to hir the reuersion and the fee simple &c.

Also, if there be three or foure Parceners that make partition between them, if the part of the one parcener be defeated by such lawfull entrie, shee may enter and occupie the other Lands of all the other parceners, and compell them to make new partitiō of the other lands betweene them &c.

Also, if there bee two Parceners, and the one taketh a husband, and the husband and the

the wife haue issue betweē them, and the wife dieth, and the husband holdeth him in the house as tenant by the curtesie: In this case the parcener that survineth, and the Tenant by the curtesie may well make partition betweē thē or. And if the tenant by curtesie will not agree to make partition, then the parcener that survineth may haue a writ de Participatione faciendā &c. and compel him to make partition. But if the tenāt by the curtesie will haue partition betweene them, & the parcener that survineth will not haue it, then the tenaunt by the curtesie shal haue no remedy for to haue partition: for he may not haue a writ de Participatione facienda, for this that he is not parcener, for such a writ lyeth for Parceners onely. And so may ye see that the writ de Participatione facienda lieth against tenant by the curtesie, & yet himselfe may not haue such a writ.

Parceners by the Custome.

PArceners by the Custome be where a man seised in fee or fee taile of lāds or tenemēts that be of the tenure called Gauelkind within the Shire of Kent, & hath issue diuers sonnes and dyeth, such Lands and Tenements shall descend to all the Sonnes by the customs, and they onely shall inherite and make partition betweene them by the custome as females doe, and a writ de Participatione facienda lyeth in this case as betweene females, but it 265

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it behoueth in this declaration to make mencion of the custome. Also such custome is in other places in England. And also such custome is in Northwales.

Also there is another Partition that is of an other nature, and in an other forme then any of the partitions aforesaid. As a man seased of certaine Lands in fee simple hath issue two daughters, and the elder is married, and the father geueth parcell of the same lands to the husband with his daughter in franke mariage, and dyeth seised of the remnant, the which remnant is of more greater value by peare then be the Lands giuen in franke mariage, in this case the husband and the wife shall haue nothing for their part of the sayd remnant, but if they will put in their lands giuen in franke mariage in hotchpot with the remnant of the Land with her Sister, and if they will not doe so, then the ponger Sister may occupie the same remnant, and take to her the profites onely. And it seemeth that this worde hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thing, but one thing with an other, and for this it behoueth in such case to put the Lands giuen in franke marriage with the other Lands in hotchpot, if the husband and the wife will haue any thing in the other remnant &c. This worde hotchpot is but a terme of similitude, and is as much to say, as to put Lands giuen in Frank marri-

age,

age, and other lands in fee simple &c. together, and this is to such intent to accompt the value of all the lands, that is to say, all the lands given in frankemariage, and the remnant that was not given; and then partition shall be made in this forme that ensueth. As put case that a man seiseth of xxx. acres of land in fee simple, every acre in value xij. pence by the yeare. Which hath issue two daughters, and the one is coueret baron, and the father giueth x. acres of the xxx. acres to the husband with his daughter in frankmarriage and dyeth seised of the remnant, then the other sister shal enter into the remnant, that is to say, in the xx. acres, and shall occupie it to her owne vse, except the husband and the wife will put their x. acres giuen to them in frankmariage with the other xx acres in Porchpot, that is to say, together, and then when the value is knowne of euery acre, that is to say, euery acre is yerely worth xij. d. then the partition shall be made in such forme, that is to say, that the husband & the wife shall haue aboue the x. acres giuen to them in frankemariage x. acres in seuerally of the xx. acres, and the other sister shal haue the remnant, that is, xv. acres of the xx. acres together part, so that accompting the x. acres that the husband and the wife had in frankemariage, and the other fiue acres of the xx. acres, the husband and the wife haue almuch in yearely value as the other sister hath, and so alwayes vpon such partition the Lands

30 12 10 20 20 10 20 12 10 20 15 20 10 20

giuen

giuen in frankmariage, abide to the donees, or to the heires &c. after the forme of the gift &c. For if ẏ other parcener should haue any thing of this that is giuen in frankmarriage, of this should follow an inconuenience, and a thing against reason, which the Law will not suffer &c. and the cause why that Lands giuen in frankmariage shall be put in hotchpot is this, that when a man giueth lands & tenements in frankmariage with his daughter, or with his other cosin, it is to be understood by the Law, that such gift made by such wordes frankmariage is an aduauncement of his daughter, or of his cosin, and namely when the donor, and his heires shall not haue any rent or seruice of him, except fealtie vntill the fourth degree be passed &c.

And for such cause the Law is that she shal haue nothing of the other lands & tenements descended to the other parceners &c. if she will not put the tenements giuen in frankmariage in Hotchpot, as is aforesayd, and if she will not put the Lands giuen in frankmariage in Hotchpot, then she shall haue nothing in the remnant, for this that it shall be understood by the Law, that she is sufficiently aduanced, to which aduancement shee agreeth & holdeth her selfe contented.

The same Lawe is betweene the heires of the Donees in frankmarriage and the parceners &c. if the Donees in frankmarriage die before their auncesters, or before such partition

tion &c. as to put in Hotchpot &c.

And note well that gift in frankemarriage was by the Common Lawe, before the Statute of Westminster the second, and alway after so hath bene vsed and continued, and so forth.

Also such putting in hotchpot &c. is where the other lands or tenements were not given in frankmarriage descend from the donor in frankmarriage onely, for if the Lands descend to the daughters by the father of the donor, or by the mother of the donour, or by the brother of the donour, or other auncestors, and not by the donor &c. where it is otherwise, for in such case shee to whom such gift in frankemarriage is made, shall haue her part as if no such gift in frankemarriage had bene made, for this, that shee was not aduaunced by him &c. but by an other.

Also, if a man seised of xxx. acres of Land, 30
euerie acre of euen yearely value, hauing issue
two daughters, as is aforesaid, and giueth of
this to the husband of the daughter xv. acres 15
in frankmarriage, and dyeth seised of the other
xv. acres, in this case that other sister shall haue 15
the fifteene acres so descended to her onely, and
the husband & the wife shall not put in such case
the xv. acres to him giuen in frankemarriage 15
in Hotchpot &c. for this that the Tenements
giuen to him in frank marriage be of as good
yearely value as the other lands descended &c.
For if the Lands giuen in frankemarriage

were

were of as euen value as the remnant, or of more value, then in value, and to none intent such Lands giuen in franke marriage shall be put in hotchpot &c. for this that she may haue nothing of the other Lands descended &c. For if she should haue any parcell of the other lands descended, then should she haue more in perely value then her sister &c. which the Lawe will not &c. And as it is said in the cases aforesayd, of two daughters, or two parceners, in the same manner, and in like case is, where there be moe sisters, after that as the case and the matters be &c.

And it is to wit, that lands and tenements giuen in Franke maryage, shall not be put in Hotchpot, but with the lands descended in fee simple, for of lands descended in fee tayle, partition shall be made as if no such gift in franke mariage had beene made. Also no Lands shall be put in Hotchpot with other, but lands that be giuen in franke marriage onely. For if any woman haue any other lands or tenements by any other gift in the tayle, shee shall neuer put such lands so giuen in hotchpot &c. but she shall haue the part of the remnant, descended &c. that is as much as the other parcener shall haue of the same remnant.

Also an other Partition may be made, betweene Parceners, that varieth from the partitions aforesaid: As if there bee three parceners, & the youngest would haue partition, and the other two would not, but will hold in par-

tena-

cenarie that that to them belongeth without partition: In this case if one part be allotted in seuerality to the yonger sister after that that shée ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder and middle parcener will make partition betweene them of that that they held, they may well doe so when they please. But where partition shalbe made by force of a writ de Participatione facienda &c. there otherwise it is, for there it behoueth that euery parcener haue his part in seuerality &c. More shall be said of Parceners in the Chapter of Iointenants, and also in the Chapter of Tenants in common.

Iointenants.

277 IOintenants bee, as a man seised of certaine lands or tenements &c. and thereof hath infeoffed, two, or three, or foure, or more, to haue and to hold to them and to their heires, or to haue and to hold to them for terme of their liues, or for terme of an others life, by force of which feoffement they be seised, such be Iointenants.

278 Also if two or three disseise an other of any Lands or Tenements to their owne vse, then the disseisors be Iointenants: But if they disseise an other, to the vse of one of them, then bee they no Iointenants, but he to whom the

vse of the disseisin is made, is sole tenant, and the other haue nothing in the tenancie, but be called coadiutors to the disseisin &c.

And note well, that disseisin is properly where a man entreth into any Lands or tenements, where his entrie is not lawfull, & putteth him out that hath the franketenement &c. And it is to wit, that the nature of iointenancy is, that he that suruiueth shall haue only the whole tenancie, after such estate as he hath if the iointure be continued &c. As if three ioyntenaunts be in fee simple, & the one hath issue & dieth, yet they that suruiue shall haue the tenements whole, and the issue shall haue nothing, and if the second iointenant haue issue and die, yet the third that suruiueth shal haue the tenements whole, and shal haue them in fee simple to him and to his heires. But otherwise it is of Parceners, for if three parceners be, & before any partition the one hath issue and dieth, that that to her belongeth shall descend to her issue, and if such a parcener die without issue, then that that to her belongeth shall descend to her coheires, so that they shal haue this by descent, and not by the suruiuor as Iointenants haue &c. And as the suruiuor holdeth place among Iointenants &c. in the same manner it holdeth place among them that haue ioynt estate or possession with others of chattels real, or chattels personall. As if a lease of lands or tenements be made to many for term of yeres, hee that suruiueth of the lessees shall haue the tene-

tenements whole to him during the terme by force of the same Lease. And if an Horse, or other chattel personall be giuen to many men, he that suruiueth shall haue them to himselfe.

In the same manner it is of debts & duties &c. For if an Obligation be made to many for one dutie, he that suruiueth shall haue all the debt, and so it is of all other couenants & contracts.

Also some iointenãts may be that may haue ioynt estates, and bee iointenants for terme of their liues, and yet they haue seuerall inheritance: As if lands be giuen to two men, & to the heires of their two bodies ingendred: In this case the donées haue ioint estate for term of their two liues, and they haue seuerall inheritance: For if the one of the donées haue issue and dye, the other that suruiueth shall haue all by the suruiuour for terme of his life. And if he that suruiueth hath also issue and dye, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the Land, and they shall hold the land betweene them in common, and be not iointenants, but tenants in common. And the cause that such donees in such cases haue ioynt estate for terme of their liues, is this, for this that at the beginning Lands were giuen to them two, which wordes without more saying, made a ioint estate to them for terme of their liues. For if a man will let lãd to another by deede, or without deede, not making mention what estate he shall, and of this maketh

iuerie of seisin: In this case the lessee shall haue estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioint estate for term of their liues. And the cause why they haue seuerall inheritance is this, insomuch that they cannot by possibilitie haue an heire betweene them ingendred as a man and a woman may haue &c. then the law will that their estate and their inheritance shal be such, as reason will, after the forme & effect of the words of the gift, and that is to the heires that the one ingendreth of his body by any of his wiues, & the heires that the other ingendreth of his bodie by any of his wiues &c. So it behoueth by necessity of reason, that they shall haue seuerall inheritances. And in such case, if the issue of one of the doners after the death of the doners die, so that he hath no issue aliue of his bodie ingendred, then the donour or his heires may enter in the halfe as in his reuersion, though the other of the doners hath issue aliue &c. And the cause is, for so much as the inheritance is seuered &c. the reuersion in the law is seuered &c. and the surmounour of the issues of the other shall hold no place to haue the whole. And so as it is said of males in the same manner it is where land is giuen to two females, and to the heires of their two bodies begotten.

Also if Lands be giuen to two females, and to the heires of one of them, this is a good Iointure, and the one hath a freehold, and the other

other hath fee simple, & if shee that hath the fee dye, shee that hath the freehold shall haue the whole by the survivor for terme of life. In the same maner it is where tenements be given to two, & to the heires of the bodie of one of them ingendred, the one hath freehold, and the other fee taple. Also if two Iointenants be seised of estate of fee simple, and the one granteth a rent charge by his deed to an other out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is voyd as to charge the land, for that he that hath the land by the survivor, shall hold all the land discharged: And the cause is for this, that he that surviueth claimeth to haue the land by the survivour &c. and not by discent of his fellow &c. But other wise it is of Parceners, for if there be two Parceners of tenements in fee simple, and before any partition the one chargeth that that to him belongeth by his deed, with a rent charge &c. and dieth without issue, & that that to him belongeth, descendeth to the other parcener, In this case the other Parcener shall hold the land charged &c. for this that he commeth to the haile by discent as heire &c.

Also if there be two Iointenaunts in fee simple within a Borough where the lands and tenements within the same Borough be deuisable by Testament, if the one of the said Iointenaunts deuise that, that to him belongeth by Testament &c. and dye, this deuise is

voyde. And the cause is this, that no deuise may take effect but after the death of the deuisor. And for this that by his death all the land incontinent commeth by the law to his fellow that surviueth, by the survivor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by the survivour after the course of the Lawe &c. for this cause such deuise is voyd.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

Also it is commonly said, that every Iointenant is seised of the land that he holdeth iointly &c. throughout and by all. And this is as much to say that he is seised by euerie parcell, & by all &c, and this is true, for in every parcel, & by each parcell, & by all the lands & tenements he is iointly seised with his fellowes &c.

And if two Iointenants be seised of certain land in fee simple. and the one letteth that, that to him belongeth to a straunger for terme of xl. yeares and dyeth within the terme: In this case after his decease the lessee may enter and occupie the halfe to him letten during the terme &c. though the lessee neuer had possession of it in the life of the lessor, by force of this lease &c. And the diuersitie betweene the case of the grant of a rent charge and this case is this, for in the graunt of a rent charge by a iointenant & tenements abide alway as they were before, without that, that any hath any right to haue

parcell

parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge &c. But where a Lease is made by a Iointenent to an other for term of peres &c. incontinent by force of the Lease the lessee hath right in the same land, that is to say, of all that that to his lessor belonged, & to haue that by force of the same lease during his term &c. and this is the diuersitie &c.

Also Iointenaunts if they will may make partition betweene them, and the partition is good enough, but they shall not be compelled by the Lawe to doe it, but if they will make partition of their proper will and agreement, the partition shall stand in his strength. P. 3. E. 4.

[See Sta. 31. H. 8. cap. 21. and 32. H. 8. cap. 32.] N. 2.

Also, if a ioint estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the Lawe in their right but the halfe &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the lawe, & be in like case as if the estate be made to two iointenants, where each one hath by force of the iointure the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husbād and the wife, and to other two men, in this case the husband and the wife haue not but the third part, and the other two men the other two parts &c. Causa

qua supra. More shalbesayd of ꝑ matter touching Jointenancie, in the Chapter of Tenants in Common.

Tenants in Common.

Sect. 292. TEnaunts in Common bee they, that haue lands and tenements in fee simple, fee tatle, or for terme of life &c. which haue such Lands and tenements by seuerall title, and not ioynt title, and none of thē knoweth that that is seuerall to him. But they ought by the law to occupie such lands and tenements in common & vndiuided to take the profits in common. And because that they come to such lands and tenements by seuerall titles, & not by one selfe ioint title, and their occupation & possession shall be by the law among them in common, therefore they be called Tenaunts in Common: as if a man infeoffe two Jointenants in fee, and one of them alieneth that that to him belongeth to another in fee, now the other Jointenant and the alienee be tenants in common, for this that they be seised in such tenements by seuerall titles, for the alienee commeth to the halfe by the feoffement of the one iointenāt, & the other iointenant hath the other halfe by force of the first feoffemēt made to him and to his first fellow, and so they be in by seuerall titles, and

293. by seuerall feoffements &c. And it is to wit, that when it is said in any Booke, that a man is seised in fee, without more saying it shall be vn-

vnderſtood fee ſimple, for it ſhall not be vnderſtood by ſuch word in fee, that a man is ſeiſed in fée taile, except that there be put thereto ſuch addition, that is to ſay, fee tayle.

294 Alſo if three Jointenants be, and the one of them alieneth that that to him belongeth to an other in fée: In this caſe the alienee is tenant in common with the other two Jointenants. But yet the other two Jointenants bée ſeiſed of the two parts iointly, and of thoſe two parts the ſurviuour betweene them holdeth place &c.

295. Alſo if there be two Jointenants in fée, and the one giueth that that vnto him belongeth to an other in the tayle, the donee and the other iointenant be tenaunts in common &c. 296. But if the Lands be giuen to two men, and to the heires of their two bodies ingendred, the doners haue ioint eſtate for terme of their liues, and if each of them haue iſſue and dye, their iſſues ſhall hold in common &c. But if Lands bée giuen to two Abbots, as to the Abbot of Weſtminſter, and to the Abbot of Saint Albons, to haue and to hold to them and to their ſucceſſors, in this caſe they haue incontinent at the beginning eſtate in common, and not ioint eſtate: And the cauſe is for this, that euery Abbot, or other Soueraign of an houſe of Religion, before that he be made Abbot, or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man perſonable in the Lawe, all onely to purchaſe,

and

and to haue Lands and tenements, and other things to the vse of his house, & not to his own proper vse, as other secular men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them dye, the Abbot that suruiueth shall not haue al by the suruiuor, but the successor of the Abbot that dieth shall hold the halfe in common with the Abbot that suruiueth &c.

297. Also if lands be giuen to an Abbot and to a secular man, to haue & to hold to them, that is to say, to the Abbot and his successors, and to the secular man, to him and to his heires, they haue estate in common, Causa qua supra.

298 Also if Lands be giuen to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common &c.

299. Also if a man seised of certaine Lands enfeoffeth another in the halfe of the same Land, without any speech of assignement or limitation of the same halfe in seueralty at the time of the feoffement, then the feoffee and the feoffor shall hold the parts of the land in cõmon. And in the same maner as is aforesaid of tenãts in common of lãds or tenements in fee simple or in fee taile, in the same maner may it be said of tenants for terme of life. As if two Iointenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other Iointenant letteth that, that to him belongeth to an other for terme of life, these two

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lessées be Tenaunts in common for terme of
their liues &c.

Also if a man let Lands to 2. men for terme of 301.
their liues, & the one granteth all his estate
of that that vnto him belongeth to an other &c.
then the other tenaunt for terme of life, & he to
whom ꝑ grant is made be tenants in common
during the time that both lessées be alive.

Also it is to be remembred, that in all other
such cases, though that they be not here ex-
pressly named or specified, if they be in like rea-
son, they be in like Law.

Also if there be two Iointenants in fee, and 302.
the one letteth that, that vnto him belongeth
to another for terme of life, the tenāt for terme
of life, during his life, and the other iointenāt
that did not let be tenants in cōmon. And vp-
on this case a question may rise, as this: Put
the case that the lessor hath issue and dyeth, lea-
ving the other iointenant his fellow, and le-
aving the tenant for terme of life, the question
may be such, if ꝑ reuertion of the halfe &c. that
the lessour hath, shal descend to the issue of the
lessor, or that the other iointenant shall haue it
by the survivour. And some haue said in this
case, that ꝑ other iointenaunt shall haue the re-
uertion by the survivor, & their reason is such,
when the iointenants were iointly seised in fee
simple &c. though the one of them made estate
of that that vnto him belongeth for terme
of life, and though that hee hath severed the
frankетenement of that that to him belongeth

by

by the Lease, yet hee hath not seuered the fee simple, but the fee simple abideth to him iointly as it was before. And so it seemeth vnto them that the other Iointenant that suruiueth, shall haue the reuersion by the suruiuour &c. And other haue said the contrarie, and this is their reason, when one of the Iointenants letteth this that to him belongeth to another for term of his life, that by such Lease the Franktenement is seuered from the iointure: And by the same reason the reuersion that is dependaunt vpon the same franktenement is seuered from the iointure. Also if the Lessor had reserued to him a yearely rent vpon the Lease, the lessour onely should haue had the rent &c. The which is a proofe that the reuersion is onely to him, and that the other hath nothing in the reuersion &c. And if the Tenant for terme of life were impleaded &c. and made default after default, then the lessour shall be onely of this receiued to defend his right, and his fellow in this case in no manner shall be receiued: which proueth that the reuersion of the halfe is onely in the lessour. And so by consequence if the Lessour dye, lyuing the lessee for terme of life, the reuersion shall descend to the heires of the Lessour &c. and not come to the other Iointenant by the suruiuour; Ideo Quære. But in this case, if the Iointenant that hath the Franktenement haue issue and die, lyuing the lessour & the lessee, then it seemeth that the issue shall haue the halfe in his demesne as of

fee

fee by deſcent, for this that the franktenement may not by nature of the iointure bee annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne as of fee, and none ſhall haue any iointure in his franktenement, Ergo this ſhall deſcend to his iſſue, Sed quære. But if it be thus, that the Lawe in this caſe is thus, that if the leſſor dye liuing the leſſee, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall deſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſurmiſour by right of the iointure, annulled and all vtterly defeated for euer.

In the ſame maner it is, if the Iointenant that hath the Franketenement dye, liuing the leſſor and the leſſee, if the lawe be ſuch that his franktenement and fee that he hath in the half ſhal deſcend to his iſſue, then the iointure ſhall be defeated for euer &c.

Alſo if three Iointenaunts be, and the one releaſeth by his deed to one of his fellowes, al the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the Lands by force of the releaſe, and he & his fellow ſhall hold the other two parts ioyntly, And as to the third part that he hath by force of the releaſe, he holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhall take effect, and ſhall be in bye to put

put the estate of him that made the release, to him to whom the release is made, as in the case aforesayd.

And also if a iovnt estate bee made to the husband and his wife, and to a third person, and the third person releaseth his right that he hath &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release &c. to the wife, not naming the husband in the release, then hath the wife the halfe that the third person had, and the husband hath nothing of this, but in right of his wife, for this that in such case the release shall inure to put the estate to him to whom the release is made, of all that that belongeth to him that made the release. And in some case a release shall inure to put all the right that he hath that made the release, to him to whom the release is made. As if a man seised of certaine Lands and Tenements, is disseised by two disseisors, if the disseisee by his deed release all his right &c. to one of the disseisours, then hee to whom the release is made, shall haue and hold all the Tenements to him onely, and put his fellow out of euerie occupation of it: and the cause is, for this, that the two disseisours were seised in the Tenements by wrong of them done against the Law. And when one of them hath the release of him that had right to enter &c. this right in such case resteth in him to whom the re-

releas is made, and in such plight, as if he that had the right had entred and enfeoffed him &c. And the cause is for this, that hee that before had an estate by wrong, that is to say, by disseisin, now by the release hath a rightfull estate.

And in some case a releas shall enure by way of extinguishment, and in such case such release shall help the tointenant to whom the release is not made, as wel as to him to whom the release is made. As if a man be disseised, and the disseisor maketh a feoffement to two mē in fee, if the disseisee release to one of the feoffees in fee by his deed, thē such a release shal inure to both the feffees, for this, that the feffees haue estate by the Law, that is to say, by the feoffement, and not by any wrong, dons to any other.

And in the same maner it is, if the disseisor make release to a man for terme of life, the remainder ouer to another in fee, if the disseisee releale to the Tenant for terme of life, all his right &c. this releale enureth aswell to him in the remainder, as to the tenant for term of life &c. And the cause is for this, that ȳ tenant for terme of life cōmeth to his estate by the course of the Law, and for this the releale shall enure and take effect by way of extinguishmēt of the right of him that hath released &c. And by this releas the tenāt for terme of life hath no greater estate then he had before the releale made vnto him, and the right of him that released is all vtterly extinct. And in so much that such

res

releaſe cannot inlarge the eſtate of the tenaunt for terme of life, it is reaſon that the releaſe ſhall enure to him in the remainder &c. More ſhall bee ſayd of Releaſes, in the Chapter of Releaſes.

Alſo if there be two Parceners, and the one alieneth that that vnto him belongeth to an other, then the other Parcener and the alienee be Tenants in common.

Alſo Tenants in common may be by title of preſcription, if the one and his auncеſtors, or they whoſe eſtate hee hath in the halfe, haue holden in common, the ſame halfe with the other tenant that hath the other halfe, & with his auncеſtors, of them whoſe eſtate he hath as vndiuided, from time whereof no memorie runneth. And diuers other matters may make and cauſe men to be tenants in common that be not here expreſſed.

Alſo in ſome caſe tenants in common ought to haue of their poſſeſſion ſeuerall actions, and in ſome caſes they ſhall ioin in one action: For if there be two Tenants in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſor two Aſſiſes, & not one Aſſiſe, for euerie of them ought to haue an Aſſiſe of his halfe &c. and the cauſe is for this, that tenants in common were ſeiſed by ſeuerall titles: But otherwiſe it is of Jointenants, for if there be twenty Jointenants, and they be diſſeiſed, they ſhal haue in all their names but one Aſſiſe, becauſe that they haue had but one ioint title.

Alſo

Also if there be three Jointenants, and one releaseth to one of his fellowes all the right that he hath, and after the other two be disseised of the whole &c. in this case the other shall haue seuerall Assises in this forme, that is to say, they shall haue in both their names one Assise of the two parts &c. for this that they held the two parts iointly at the time of the disseisin: And as to the third part, he to whom the release is made, ought to haue thereof an Assise in his owne name, for this, that as to the third part he is Tenant in common &c. for this, that he came to the third part by force of the release, and not onely by force of the iointure.

Also, as to sue actions that touch the realty, there is diuersity betweene parceners that be in by diuers descents, and tenants in common. For if a man seiseth of certaine lands in fee, haue issue two daughters and dy, and they enter &c. and each of them haue issue a sonne, & dieth without partition made betweene them, by which the one halfe descendeth to the sonne of the one parcener, and the other halfe descendeth to the sonne of the other parcener, & they enter and occupy in common, and be disseised: in this case they shal haue in their two names one Assise, and not two Assises: and the cause is, that though they come in by diuers descents &c. yet they be Parceners, and a quasi de Participatione facienda lieth betweene them, and they be not Parceners, hauing regard vn-

respect onely to the seisin and possession from their mothers, but they be parceners, having more respect to their estate that descended frō their graundfather to their mothers: For they may not be Parceners, where their mothers were not Parceners before &c. And so to such respect and consideration, that is to wit, as to the first descent, that was to their mothers, they haue a title in parcenarie, the which maketh them parceners: And also they be but as one heire to their common auncestor, that is to say, to their Graundfather, from whom the land descended to their mothers: And for these causes before partition betwern them &c. they should haue one Assise, though they come in by seuerall descents &c.

Also, if there be two tenants in common of certaine Lands in fee, and they giue the same Land to another man in the taile, or let it to another man for terme of life, yelding an annuitie, or certaine rent, and a pound of Pepper, or an Hauke, or an Horse, and they bern seised of these seruice, and after all the rent is behind, and they distraine for it, and the Tenant maketh releas: In that case, as to the rent and the pound of Pepper, they shall haue two Assises: and as to the Hauke, and the Horse, but one Assise. And the cause why they haue two Assises as to the rent and pound of Pepper, is this, in so much that they were Tenants in common by seuerall titles, and when they made a gift in the tayle, or leale for terme

of

of life &c. saning to them the reuersion, and yeelding to them certaine rent &c. Such reseruation is incident to their reuersion. And for this that their reuersion is in common, and by seuerall titles, as their possession was before, the rent and other thinges that may be seuered and were to them reserued upon the gift, or upon the Lease, which be incident by the Lawe to the reuersion, such things so seuered were of the nature of the reuersion, which reuersion is to them in common by seuerall titles.

And it behoueth that the rent of the pound of Pepper which may be seuered be to them in common by seuerall titles. And of this they shall haue two Assises, and euery of them in his Assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper &c.

But of the Hauke & the Horse which cannot be seuered, they shall haue but one Assise, for a man may not make a plaint in Assise of the halfe of an Hauke, or the halfe of an Horse, &c. In the same maner it is of other rents and seruices & tenaunts in common haue in grosse by diuers titles.

Also, as to Actions personals, Tenants in common ought to haue such actions personals ioyntly in all their names, that is to say, of Trespas, or of offences that touch their Tenements in common: as of breaking of their houses, breaking of their closes and

pastures, wasting & defouling of their grasse, cutting of their wood, & to fish in their ponds, and such other: In this case tenants in common shall haue one action iointly, and recouer ioynt dammages, because that the action is in the personalty, and not in the realty.

Also, if two Tenants in common make a lease of their two Tenements to an other for terme of yeares, yeelding vnto them yearely a certaine rent, if the rent be behind &c. the Tenants shall haue one action of Debt against the lessee, and not diuers actions, for that the action is in the personalty.

Also tenants in common may make partition betweene them if they will though they shall not bee compelled by the Lawe. But if they make partition betweene them by their agreement and assent, such partition is good enough, as it is adiudged in the booke of Assises P. 3. E 4.

Also as there be tenants in cōmon of lands or tenements &c. as is aforesaid: In the same maner there be tenāts in common of chattels reall, and chattels personall. As if a Lease be made of certaine lands to two men for terme of xx. yeares, & when they be thereof possessed, the one of the lessees granteth that that vnto him belongeth during the terme to an other, then he to whom the graunt is made, and the other shall hold and occupy in common.

Also, if two Iointenants haue the ward of the bodie and of the Lands of a chude within age,

age, and the one of them graunteth to an other that that vnto him belongeth of the same ward, then the grantee & the other that graunteth not, shall haue & hold it in common &c.

In the same manner it is of chattels personals: As if two haue a ioynt estate by gift or by buying of an Hoyse, or an Ore &c. the one of them graunteth that that to him belongeth of the same Hoyse, or Ore &c. Then the graunte and he that graunteth nat, shal haue & possesse such chattell personall in common &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them die, the other that suruiueth, shall not haue that by the suruiuor. But the executors of him that dyeth shall hold and occupie that with him that suruiueth, as their testatour did or ought in his life &c. for this that their titles and right in this case were seuerall.

Also, in this case aforesayd, if two haue estate in common for terme of yeres, & the one occupie all and put the other out of his possession and occupation: Then shall he that is put out of occupation, haue against the other a writt de Ejectione firmæ for the halfe against the other. In the same maner it is where two hold the ward of Lands or Tenements during the nonage of a childe, if one put out the other of his possession, he that is out shall haue a writt of Ejectment de garde of the halfe, for this that those thinges bee Chattels reals,

and may be appoꝛtioned and seuered &c. But no such action of trespas, that is to say, Quare clausum suum fregit, & herbam suam conculcauit & consumpsit &c. and such like actions the one may not haue against the other, foꝛ this that eaꝛh of them may enter and occupie in common &c. throughout and by all the tenements which they hold in common. But if two be possessed of chattels personals in common by diuers titles, as of an hoꝛse, oꝛ an oxe, oꝛ a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wꝛong foꝛ to occupy in common when he may see his time.

In the same manner it is of Chattels reall that may not be seuered, as in the case afoꝛesaid: If two be possessioners of a ward of the bodie of a child within age, if one take the child out of the possession of the other, the other hath no remedy by any action by the Law, but to take the child out of the others possession when he seeth his time &c.

Also, when a man in pleading will shewe a deed of feoffement made vnto him, oꝛ a gift in the taile, oꝛ a lease foꝛ term of life of any lands oꝛ Tenements, there he shall say by foꝛce of which feoffement, gift, oꝛ lease, he was seised &c. But where a man will plead a Lease oꝛ graunt made vnto him of a chattell reall oꝛ personall, there he shall say by foꝛce of which he was possessed.

More

More ſhall be ſaid of Tenants in common in the Chapter of releaſes, and Confirmations.

Eſtates vpon Condition.

Eſtates yͤ men haue in lands or tenemẽts vpõ cõdition, be in 2. maners: yͤ is to ſay, they haue eſtate vpon condition in deed, or vpõ condition in law. Vpon condition in deed, is as a man by deed indented infeoffeth an other in fee, reſeruing to him and to his heires yerely a certain rent, payable at one feaſt, or at diuers feaſts by the yere, vpon condition, that if the rent be behind &c. that it ſhal be lawfull to the Feoffor and to his heires to enter into the Lands or Tenements &c. Or if the Land be aliened to another in fee, to yeeld vnto him certaine rent &c. And if it hap that the rent be behind by a weeke after any day of paiment of it, or by a Moneth, or by by a halfe yere after any day of payment, that then it ſhalbe lawfull to the feoffor and to his heires to enter &c. In this caſe, if the rent be not payed at ſuch a day, or before ſuch a time limited & ſpecified within the Condition compriſed in the Indenture, then may the Feoffour or his heires enter into ſuch Lands or Tenements, and them in his firſt eſtate to haue and to hold, and of this to put the Feoffee cleane out: And it is called Eſtate vpon condition, for this, that the

eſtate of the feoffee is defeaſible, if the condition be not performed.

In the ſame maner it is if Lands be giuen in the tayle, or let for terme of life, or for terme of yeares, vpon ſuch condition &c. But where a feoffement is made of certaine Lands, reſerwing certaine rent vpon ſuch condition, that if the rent be behind, that it ſhall be lawful to the feoffor and his heires to enter, and the land to hold till they be ſatisfied or payed of their rent behind &c. In this caſe if the rent be behinde, and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor ſhall haue and hold the Land, and take the profits till that he be ſatisfied of the rent behind &c. And when he is ſatisfied, the feoffee may re-enter in the ſame Land, and hold it as he did before, for in ſuch caſe the feoffor ſhal haue it but in maner for a diſtreſſe, in the meane time till he be ſatisfied of the rent &c. though he take the profits in the meane time.

Alſo, diuers words among other there be, that by vertue of themſelfe make eſtate vpon condition: One is, this word of Condition, as A. enfeoffed B. of certaine Land, to haue and to hold to the ſame B. and to his heires vpon Condition, that the ſame B. and his heires ſhall pay, or doe to be payed to the foreſaid A. and to his heires yerely ſuch rent &c. In theſe caſes without any more ſaying the feoffee hath eſtate vpon condition. Alſo if the Condition were ſuch, Prouided alway, that the

the aforeſaid B. pay, or doe to be payed to the aforeſaid A. ſuch rent: Or if they were thus, ſo that the foreſayd B. pay, or doe to be paied ſuch rent: In theſe caſes without any more ſaying, the feoffee hath eſtate but vpon condition, ſo that if he performe not the condition, the feoffor and his heires may enter &c.

Alſo, other wordes there be in a deed that cauſeth the Tenements to be conditionall, as vpon ſuch a Feoffement a rent is reſerued to the Feoffor &c. and after it is put in the deed, that if it chaunce the aforeſayd rent to be behinde in part or in all &c. that then it ſhall be lawfull to the feoffor and to his heires to enter, and this is a deed vpon condition. But there is diuerſitie betweene the wordes (if it chaunce &c.) and the wordes next aforeſayd, for this word (if it chaunce &c.) is nought worth to ſuch condition, but if it hath theſe wordes following, that is to ſay, that it ſhall be lawfull to the Feoffor and to his heires to enter &c. But in theſe caſes aforeſayd, it needeth not by the law to put ſuch clauſe, that is to ſay, that the Feoffor and his heires may enter &c. for this, that they may ſo doe by force of the wordes aforeſayd, becauſe they containe in themſelues in the Law a Condition, that is to ſay, That the feoffor and his heires may enter. Yet it is common in all ſuch caſes aforeſayd, to put ſuch clauſes in the deedes, that is to ſay, if the rent be behinde &c. that it ſhall be lawfull to the ſame Feoffour and his

heires

heires to enter &c. And this is well done to that intent for to declare and expreſſe to the lay men that be not learned in the Law, the manner and the condition of the feoffement &c. As a man ſeiſed of land as of franktenement, lets the ſame land to an other by deed indented for terme of yeares, yeelding vnto him certaine rent, it is vſed to bee put in the deed, that if the rent be behind at the day of payment, by a Moneth &c. that then it ſhall be lawfull to the leſſor to diſtraine &c. and yet the leſſor may diſtraine of common right for the rent behinde &c. though ſuch wordes neuer were ſet in the deed &c.

Alſo, if a feoffement be made vpon ſuch condition, that if the Feoffour pay at a certayne day &c. twentie pounds of money, that then the Feoffour may enter &c. In this caſe the feoffee is called Tenant in Mortgage, that is as much to ſay in French, as Mortgage, and in Latin Mortuum vadium, and in Engliſh, a dead pledge. And it ſeemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the feoffor will pay at the day limited, ſuch a ſumme or not: And if he pay not, then the land that is put in pledge vpon condition for the payment of the money, is gon from him for euer, and ſo dead as to the Tenant &c.

Alſo, as a man may make a Feoffement in fee in Mortgage, ſo may a man make a gift in the tayle in Mortgage, and a leaſe for terme

of

of life, or for terme of yeares in Mortgage. And all such Tenants be tenants in Mortgage after the state that they haue in the Lands &c,

Also, if a Feoffement bee made in Mortgage, vpon condition that the Feffour shal pay such a summe at such a day &c. as is betweene them by their deede indented accorded and limited, though the Feffour dye before the day of payment &c. yet if the heire of the feoffour pay the summe within the day to the Feoffee, or profer him the money, and the feoffee refuseth to receiue it, then may the heire enter into the Lands. And yet the condition is, if the Feoffor pay such a summe such a day &c. and not making mention in the condition of any payment to be made by his heire, but for this that the heire hath interest of right in the condition &c. And the intent was but that the money should be payed at such a day set &c. And the feoffee hath no more damage to be payed by the heire, then though he were payed by the father &c. for this cause if the heire pay the money, or tendreth the money at the day set &c. and the other refuseth it, he may well enter. But if a straunger of his owne head that hath no interest &c. would tender and pay the money at the day set, then the Feoffee is not bound to receiue it &c.

Also, it is to be had in minde, that in such case where such lawfull tender of the money

is made, and the Feoffee refuſeth to receiue it, wherefore the Feoffor or his heires doe enter &c. then the feoffee hath no remedy to haue the money by the common Lawe, for this that it ſhall be counted his owne folly that he refuſed the money when lawfull proffer was made of it vnto him &c.

Alſo, if a feoffement be made with ſuch condition, that if a Feoffee pay to the Feoffor at ſuch a day betweene them limited xx. li. that then the Feoffee ſhal haue the land to him and to his heires, and if he faile to pay the money at the day &c. that then it ſhall be lawfull to the Feoffor, or to his heires to enter &c. And if after, before the day ſet, the Feoffee ſelleth the Land to an other, and therof make a Feoffement vnto him, in this caſe if the ſecond feoffee will tender the ſumme of money at the day ſet to the Feoffor, and the Feoffor refuſeth it &c. then hath the ſecond Feoffee eſtate in the land cleerely without condition: And the cauſe is, for that the ſecond Feoffee had intereſt in the condition for ſaluation of his tenancy. And in this caſe it ſeemeth, that if the firſt feoffee after ſuch ſale of Land will tender the money at the day ſet &c. to the Feoffor, that ſhall be good enough for the ſaluation of the eſtate of the ſecond feoffee: for this, that the firſt feoffee was priuie to the condition, and ſo the tender of any of them is good enough &c.

Alſo if the feffemēt be made vpon condition, that if the feoffor pay a certain ſumme of mony

to

to the feoffée: that then it shalbe lawfull to the feoffor and to his heires to enter &c. In this case if the feoffor dy before the day of payment, and the heire will tender to the feoffor the money, such tender is voyde: for this that the time within which the tender ought to bee made, is past. For when the condition is, that if the feoffor pay the money to the feoffée, this is as much to say, that if the feoffor during his life pay the money to the feoffée &c. And when the feoffor dyeth, then the time of the tender is past. But otherwise it is where day of payment is limited, and the feoffor dyeth before the day, then may the heire tender the money, as is aforesayd, for this that the time of the tẽder was not past by the death of the feoffor. Also it seemeth in such case where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the money to the feoffee at the day of payment, the tender is good enough. And if the feoffee refuse this, the heires of the feoffor may enter &c. And the cause is for this, that the executors represent the person of the testator &c.

And note well, that in all such cases of condition of payment of a certaine sum in grosse, touching lands or tenements, if lawful tender be once refused, he that ought to pay the mony is therof quitede clerely discharged for ever.

Also, if the feoffée in mortgage before the day of payment that shall be made vnto him make his executors & dy, and his heire enter into the

land

Land as he ought. It ſeemeth in this caſe that the Feoffor ought to pay the money at the day ſet to the executors, and not to the heire of the feffee, for this, that the money at the beginning belonged to the Feoffee in manner as a dutie. And it ſhall be vnderſtood, that the eſtate was made becauſe of borrowing of the mony of the Feoffee, or becauſe of an other dutie, & for this the payment ſhall not be made to the heire of the Feoffee, as it ſeemeth. But the wordes of the Condition may be ſuch, that the payment ſhall be made vnto the heire, as if the condition were that the feoffor pay to the feoffee, or to his heires, ſuch a ſumme at ſuch a day &c. There after the death of the feoffee (if he die before the day limited) then the payment ought to bee made to the heire at the day ſet &c.

Alſo in ſuch caſe of a Feoffement in Mortgage, a queſtion hath bin demaunded, in what place the Feoffor is bound to tender the mony to the Feoffee at the day ſet &c. And ſome haue ſaid, that vpon ỹ land ſo holden in Mortgage, for this, that the condition is dependant vpon the Land, and they haue ſaid, that if the feoffor be ready vpon the Land, to pay the money at the feaſt or day ſet, and the feoffee be not at that time there, that thē the feoffor is excluded and diſcharged of payment of the money, for this, that no default was in him. But it ſeemeth to ſome men that the law is contrary, and the default is in him: for hee is bound to ſeeke the Feoffee, if he be then at that time in any manner

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of place within the Realme of England. As if a man be bound in an Obligation, of xx. l. vpon condition indorſed vpon the Obligatiõ, that if he pay to him to whom the Obligation is made, at ſuch a day ten pound, that then the Obligation of xx. l. ſhall loſe his force, & ſhall be holden for nought: In this caſe it behoueth him that made the Obligation to ſeeke him to whom the Obligation is made, if he be within England, and at the day ſet, to tender him the ſayd x. l. &c. Or otherwiſe he forfeiteth the ſumme of xx. l. compriſed within the Obligation, and ſo it ſeemeth in the other caſe &c. And though that ſome haue ſayd that the condition is dependant vpon the land, yet this is not proued that the leſance of the condition to be performed, ought to be made vpon the Land &c. No more then if the condition were, that if the feoffor ſhould do at ſuch a day &c. an eſpeciall corporall ſeruice to the feoffee, not naming the place where the corporall ſeruice ſhould be done: In this caſe the feoffor ought to doe ſuch corporall ſeruice at the day limited to the feoffee, in whatſoeuer place in England that the Feoffee be, if he will haue aduantage of the condition &c. And ſo it ſeemeth in that other caſe. And it ſeemeth to them, that it ſhall be more properly ſaid, that the eſtate of the land is dependant vpon the Condition &c. then to ſay, that the Condition is dependant vpon the Land: But inquire &c.

But if a Feoffment in fee be made reſer-

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ning to the feoffor an annuell rent, and for default of payment a reentrie &c. in this caſe it needeth not to the tenant to tender the rent when it is behinde, but onely vpon the Land, for this, that this is a rent going out of the land, which is rent ſecke. For if the feoffor be once ſeiſed of his rent, and after hee commeth vpon the land &c. and the rent is denied him &c. he may haue an Aſſiſe of Nouel diſſeiſin, for though he may enter, becauſe of the condition broken, yet he may chuſe, that is to ſay, to enter, or to haue an Aſſiſe. And ſo is there diuerſitie, as to the tender of the rent that is going out of the Land, & of tender of another ſumme in groſſe, which is not going out of the land. And therefore it ſhall be ſure and a good thing for them that will make ſuch Feoffement in Mortgage, to put and ſet a ſpecial place where the money ſhall be paid. And the more ſpeciall that is to put, the better is for the feoffour. As if A. infeoffe B. to haue to him and to his heires vpon ſuch condition, that if A. pay to B. in the feaſt of Saint Michaell the Archangell next comming, in the Cathedrall Church of S. Paul of London, within foure houres next before the houre of none of ꝑ ſame Feaſt, at the rode loft of the North dore within the ſame Church, or any other certain place within the ſame Church: that then it ſhall be lawfull to the forſaid A. and to his heires to enter &c. In ſuch caſe he needeth not to ſeeke the feoffee in any other place, but in the place comprized

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in the Indenture, nor to be there more longer time then the time specified in the same Indenture, for to render or pay the money to the feoffee.

Also in such case where the place of paimēt is limited, the Feoffee is not bound to receiue the payment in none other place, but in the place so limited: But yet if he receiue the payment in any other place, that is good enough, and as strong for the feoffor, as if the receit had bin in the place so limited &c.

Also in this case of feffement in Mortgage, if the feoffor pay the Feoffee an horse, or a cup of siluer, or a ring of gold, or any other such thing in full satisfaction of the money, and the other this receiueth, this is good enough, & as strong as if he had receiued the summe of mony, though the horse, or any of the other things be not the twentieth part worth in value of the summe of money, for this, that the other hath accepted it in plaine & full satisfaction.

Also if a man enfeoffe an other in fee vpon condition, that he and his heires shall yeeld to a stranger and his heires a yerely rent of xx s. and if he and his heires faile of payment of this, that then it shall be lawfull to the feoffor and to his heires to enter, this is a good condition: And yet in this case, though such a yearely rent be called an annuell rent, this is not properly a rent, for if it shal be rēt it ought to be rent seruice, rent charge, or rent seche, and it is one of them, for if the stranger

were seised of this, and after it were to him de-
nyed, he shall neuer haue an Assise of this, for
this that it issueth not out of any Lands, and
so the straunger hath no remedie, if any such
yearely payment be behind in this case, but
that the feoffour and his heires may enter &c.
and yet if the feoffour and his heires enter for
default of payment, then such rent is gone for
euer. And so such rent is but a payment set to
the Tenant and to his heires, that if they will
not pay this after the forme of the Indenture,
ẏ they shall leese their land by the entrie of the
Feoffor or his heires, for default of payment.
And in this case it seemeth that the feoffee and
his heires ought to seeke the stranger and his
heires if they be in England, because that no
place is limited where the payment shall be
made, and because that such rent is not going
out of any Land &c.

And here note well two things, one is that
no rẽt that is properly said rent, may be reser-
ued vpon any feoffement, gift or lease, but only
to the feoffor or to ẏ donor, or to the lessor, or to
their heirs, & in no manner may be reserued to
ny strange person. But if 2. io intenãts make a
Lease by deed indented, reseruing to the one a
certaine yerely rent, that is good enough to him
to whom the rent is reserued, for this that
he is priuie to the lease and not a straunger to
this &c. The second thing is, that no entry or
reentrie (which is all one) may be reserued nor
given to any person, but onely to the Feoffour

or to the donor, or the lessor, or to their heires, and such entrie may not be aliened nor graunted to any person. For if a man let Land to an other for terme of life by Indenture, yeelding to the lessor & to his heires certaine rent, & for default of payment a reentrie &c. if after the lessor by a deed grant the reuersion of the land to an other in fee, and the Tenant for terme of life attorneth &c. if the rent after be behind, the grantee of the reuersion may distraine for the rent, for this that the rent is incident to the reuersion, but he may not enter into the land and put out the Tenant as the lessor might, or his heires, if the reuersion had beene continued in them &c. And in this case the entrie is taken away at all times, for the grantee of the reuersion may not enter, Causa qua supra. See Stat. 32. H. 8. ca. 34. if the Lease be by deed indented. And the lessour nor his heires may not enter, for if the lessour may enter, then he ought to be in his first estate &c. & that may not be, for this that he hath put from him the reuersion &c.

Also if there be Lord & tenant, & the tenant make such a Lease for terme of life, yeelding to the lessour and to his heires, such yearely rent, and for default of paiment a reentrie &c. if after the lessour die without heire, during the estate of the tenant for terme of life, by which the reuersion commeth to the Lord by way of Escheat, and after the rent of the tenant for term of lyfe is behind, the Lord may distraine the Tenaunt for the rent behind, but hee may not

enter into the land by force of the condition &c. for this that he is not here to the ſealing &c.

Alſo if land be graunted to a man for terme of yeares vpon condition, that if he pay to the graunter within 2. yeares xl. Marks, that then he ſhall haue the land to him & to his heires &c. In this caſe if the grantee enter by force of the graunt, and after he paieth to the grantor xl. Marks within the 2. yeares, yet he hath nothing in the land, but for terme of 2. yeres, for this that no Liuerie of ſeiſin was to him made at the beginning, for if he had had franktenement and fee in this caſe, becauſe he hath performed the condition, then ſhould he haue franktenemẽt by force of the firſt grant where no Liuerie of ſeiſin was made thereof, which ſhould be againſt reaſon &c. But if the graunter had made liuery of ſeiſin to the grantee by force of the graunt, then hath the grantee the franketenement and the fee vpon the performance of the ſame condition.

Alſo, if lands be granted to a man for terme of fiue yeres, vpon condition that he pay to the graunter within the firſt 2. yeres xl. Marks, that then he ſhall haue fee, or elſe but for terme of 6. yeres, & liuery of ſeiſin is made to him by force of the graunt: Now he hath fee ſimple conditionell &c. and if in this caſe the grantee pay not to the graunter the xl. marks within the ſame 2. firſt yeares, then immediatly after the ſame 2. yeares the fee & the franktenement is and ſhall be auoyded to the grantor, for this

that

that the graunter may not after the two yeres incontinent enter vpon the graunte, for this that the graunter hath yet title by three yeres to haue and occupie the Land by force of the same graunt. And so for this, that the condition on part of the graunte is broken, and the graunter may not enter, the Law shal put the fee and franktenement in the graunter: For if the graunte in this case make waſte, then after the breaking of the condition &c. and after the two yeres the graunter shal haue his writ of waſte, and this is a good proufe that the reuerſion is to him &c. But in ſuch caſe of feoffements vpon condition where the feoffer may enter lawfully for the condition broken &c. There the feoffee hath the franktenement before the entrie &c.

Alſo, if a Feoffement be made vpon ſuch condition, that the Feoffee ſhall giue the Land to the Feoffer, and to the wife of the Feoffer, to haue and to hold to them and to the heires of their two bodies ingendred, and for default of ſuch iſſue, to remaine to the right heires of the Feoffour: In this caſe if the Husband dye ieuing the wife, before eſtate in the taple made to him, then ought the feoffee by the law to make eſtate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to ſay, to let the land to the wife for terme of life without impeachment of waſte, the remainder after her deceaſe to the heires ingendred of the body of her

husband & hers, & for default of such issue, the remainder to the right heires of the husband. And the cause why the Lease shall be made in this case to the woman sole without impeachment of waste, is for this, that the condition is, that the estate shalbe made to the husband and his wife in tayle. And if such estate had been made in the lyfe of the huband, then after the death of her husband shee hath estate in the taile sole, which estate is without impeachmēt of waste: and so it is reason, that if after a man may make estate to the intent of the condition &c. that he shal make it &c. though that she cannot haue estate in the taile as she might haue had, if the gift in the taile had been made to the husband, & to her in the life of her husband &c.

Also in this case if the husband and the wife had issue & die before the gift in the taile made vnto them &c. then ought the Feoffee to make estate to the issue, and to the heires of the Father and mother ingendred, and for default of such issue &c. the remainder to the right heires of the husband &c. And the same Law is in other cases semblable. And if such a Feoffour will not make such estate when he is reasonably required by them that ought to haue estate by force of the condition &c. then may the Feoffor and his heires enter &c.

Also, if a Feoffement be made vpon condition, that the Feoffee shall infeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to

haue estate, dye before any estate made vnto them, then ought the feoffee to make the estate to the heires of him that surmiueth of them, to haue and to hold to him, and to the heires of him that surviueth &c.

Also, if a feoffement be made vpon condition to enfeoffe an other, or to giue in the tayle to an other &c. if the feoffee before the performing of the condition enfeoffe a strange person, or make a Leafe for terme of life, then may the Feoffor and his heires enter &c. for this, that hee hath disabled himselfe to performe the condition, insomuch that he made estate to an other &c. In such maner it is, if the feffee before the condition performed, let the same Land to a stranger for terme of yeares: In this case the feoffor or his heirs may enter &c. for this that the feoffee hath disabled himselfe to make estate of the tenements according to thatthat was in the tenements when the estate thereof was made vnto him, for if he will make estate according to the Condition &c. then may the Feoffee for terme of yeares enter & put out him to whom the estate is made &c. and to occupie this during his terme. And many haue sayd, that if such a feffement be made to a man sole vpon the same Condition, and before that he hath performed the condition he taketh a wife, then the feoffor or his heire may incontinent enter, for this that if he haue made estate according to the condition, & after dieth, his wife shal be endowed, & may recouer her dowrie by a writ of

Dower &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the Feoffement vpon condition, for this, that no ſuch woman was indowable, nor ſhould be endowed by the Law &c.

In the ſame maner it is, if the feoffor charge the land by his deed of a rent charge before the performing of the condition, or be bound in a ſtatute Staple, or ſtatute Marchant, that in ſuch caſes, the feoffor & his heires may enter, Cauſa qua ſupra. For whatſoeuer commeth to the tenements by the feoffement of the feoffee, then the tenements muſt be lyable, and be put in execution by force of the ſtatute aforelayd. But when the Feoffor, or his heires, for the cauſes aforeſaid haue entred to as they might, as it ſeemeth &c. Then all ſuch things that before ſuch entrie may trouble or incumber the tenements ſo giuen vpon condition, as touching the ſame tenements is vtterly defeated &c.

Alſo, if a man make a deede of feoffement to an other, & in the deed is no condition &c. And when the feoffor will make to him liuery of ſeiſin by force of the ſame deed, he maketh liuerie of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not comprized in the deed, & the feoffement is of ſuch force as if no ſuch deed had beene thereof made &c.

Alſo if a feoffement be made vpon ſuch condition, that the feoffee ſhall not alien the land to any man, this condition is void, for this, that

when

when a man is infeoffed in Lands or Tenements, he hath power to alien them to some person by the law. For if such condition should be good, then the condition putteth him out of all the power that the Lawe giueth, which should be against reason, and for this such condition is voyde. But if the condition be such, that the feoffee shall not alien to one such, naming his name, or to any of his heires, or his issues &c. or such other like, the which condition taketh not away all the power of alienation of the feoffee &c. then such condition is good.

Also if Tenements be giuen in the tayle vpon such condition, that the Tenaunt in the tayle, nor his heires &c. shall not alien in fee, nor in tayle, nor for terme of anothers life, but for their owne liues &c. such alienation and condition is good: And the cause is for this, that when he maketh such alienation and discontinuance, he doth contrarie to the intent, for which the Statute of westminster the second was made, by which estatute, the estates in the tayle be ordayned, for it is proued by the words comprised in the same estatute, that the intent of the making of the same estatute was, that the will of the donor in such cases should be obserued. And when tenant in the taile maketh such discontinuance, he doth the contrary to that &c. And also in estates in the tayle of any Tenements when the reuersion of the fee simple is in an other person, when such discontinuance

tinuance is made, then the fée simple in the reuersion, or the fée simple in the remainder is discontinued, and for that that the Tenant in the taile shall doe no such thing against right, such conditions are good, as is aforesaid &c.

Also a man may giue land in the taile vpon such condition, that if the tenant in the taile or his heires alien in fée, or in tayle, or for terme of an others life &c. And also, that all the issues comming of the tenāt in the taile be dead without issue, that then it shalbe lawful to the Donor and to his heires to enter &c. & by such way the right of the tayle may be saued after such discontinuance to the issue in the tayle if there be any, so that by way of entry of the donor or of his heires, the taile shall not be defeated by such condition, and yet if the Tenant in the tayle in this case, or his heires make any discontinuance &c. he in the reuersion or his heires after this that the tayle is determined for default of issue &c. may enter into ẏ land by force of the same condition, and shal not be driuen to sue a writ of Formedon in ẏ reuerter.

Also, a man may not plead in an action, that estate was made in fée, in the taile, or for terme of life vpon condition, but if he vouch a record thereof: or shew a writing vnder seale, proving the same condition, for it is a common erudition and learning, that a man by pleading shall not defeat any estate of franktenemēt by force of any such condition, vnles he shew the proofe of such condition in writing &c. except it be in

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some especiall case: but of chattels reals, as of a lease made for terme of yeres, or of graunts of wards made by wardens in chiualrie, and of such other &c. a man may plead that such gifts or graunts were made vpon condition &c. without shewing of any writing of condition. And in the same maner a man may do of gifts and graunts of Chattels personals, and of contracts personals &c.

Also, though that a man in some action may not plead a condition that toucheth and concerneth franktenement without shewing of writing thereof, as it is aforesayd, yet a man may be holpen vpon such condition by the verdict of xij. men taken at large in Assise of disseisin, or in some other action where the Justices will take the verdict of the twelue Iurors at large. As put the case that a man seised of certaine Land in fee, letteth the same land for terme of life without deed, vpon condition to yeeld to the Lessour a certaine rent, and for default of payment a reentrie &c. by force of which the lessee is seised as of a franketenement, and after the rent is behinde, by which the Lessour entreth into the land, and after the lessee arraigneth an Assise of Nouel disseisin of the land against the lessor, the which pleadeth that he doth no wrong, ne no disseisin, and vpon this the Assise is taken.

In this case the Recognitors of the Assise may say and yeeld to the Justices their verdict at large vpon all the matter, as to say that the

defendant was ſeiſed, and to ſeiſe, let the ſame Land to the plaintife for terme of his life, to yeld to the leſſor ſuch annuell rent payable at ſuch a feaſt, & vpon ſuch condition, that if the rent be behind at any ſuch feaſt that it ought to be payed, that then it ſhall be lawfull to the Leſſor to enter &c. by force of which L. eaſe the plaintif was ſeiſed in his demeſne as of franke tenement, & after the rent was behind at ſuch a feaſt, in ſuch a yeare &c. for which the Leſſor entred into the land vpon the poſſeſſion of the leſſee, & pleadeth the diſcontinuance of the Iuſtices, if this be a diſſeiſin done by the plaintif or not. And then for this that it appeareth to the Iuſtices, that this was no diſſeiſin done to the plaintife, ſithomuch that, that the entrie of the leſſor was lawfull vpon him, ſ. Iuſtices ought to giue iudgement that the plaintife ſhall take nothing by his writt of Aſſiſe. And ſo in ſuch caſe the leſſor ſhall be holpen, & yet no mention was euer made of the condition, for oftentimes as the Iurors may haue knowledge of the eaſe, in the ſame manner may they haue knowledge of the condition rehearſed in the eaſe. In the ſame manner it is of a feoffement in fee, or a gift in the taile vpon condition, though neuer mention was made thereof &c. And as it is ſaid of a verdict at large in Dower, in the ſame manner it is of a writt of Entre ſounded vpon diſcontinuance, & in all other actions where the Iuſtices ſhall take a verdict at large, there where the verdict at large is made, the nature of the eſtate is

put

put in the issue. Also in such case where the Enquest may say their verdict at large, if they will take upon them the knowledge of the law upon the matter, they may say their verdict generall, as it is put in their charge, as in the case aforesaid, they may well say that the lessor disseised not the lessee if they will so.

Also in the same case, if the case were such, that after then that the lessor had entred for default of payment &c. that the A. also had entred upon the lessor, and him disseised. In this case if the lessor arraigneth an Assise against the lessee, the lessee may barre him of his Assise, for he may plead against him in barre, how the lessor that is plaintife made a lease to the defendant for terme of life, saving the reuersion to the plaintife, the which is a good plea in barre, inasmuch that he knowledgeth the reuersion to be in the plaintife, and in this case he hath no matter to help him, but the condition made upon the A. case, and that he may not plead, for that he hath no writing, and inasmuch that he may not answere to the barre, he shall be barred. And so in this case ye may see, that a man is seised, and he shall have Assise, and yet if the lessee be plaintife, and the lessor defendant, he shall barre the lessee by verdict of the assise. But in this case where the lessee is defendant, if he will not plead the said plea in barre, but plead no seasing ne disseisin, then the lessor shall recouer by Assise, Causa qua supra.

Also because such conditions be most com-

monly

monly put & specified in deedes indented, some little thing shall be said here (to ther my sonne) of Indētures, & of a deed poll containing cōditiōs. And it is to wit, that if the indēture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture be but one deede in the law, & euerie part of the Indenture is of himself of as great force and effect, as all the parts together. And the making of Indentures is in 2. manners. One is to make them in the third person, an other maner is to make them in the first person. The making of the third person is as in such forme. This Indenture made betwēen A. of B. of the one part, & C. of D. of the other part, witnesseth, that the foresayd A. of B. hath giuen & granted, & by this present deed indented, hath cōfirmed to ẏ foresaid C. of D. such land, To haue &c. vpon the condition &c. In witnes wherof the parties beforesaid interchangeably haue put to their seals: Or else thus. In witnes wherof to ẏ one part of this indēture remaining with the said C. of D. the foresaid A. of B. hath put to his seale, & to the other part of the sayd Indenture remayning with the said A. of B, the said C. of D. hath put to his seal, giuē &c. Such Indētures are called indētures made in the third persō, for this that the verbes be in the third persō, and such forme of indēture is the more sure making, for that it is more cōmonly vsed. The making of Indētures in the first person is of such forme. To all true Christian people to whom this

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preſent writing indented ſhall come, A. of W. greeting in our Lord euerlaſting. Know ye me to haue giuen & granted, and by this my preſent deed indented to haue confirmed to C. of D. ſuch land &c. Or elſe thus: To all men that be preſent, and them that be to come, that I A. of W. haue giuen & granted, and by this my preſent deed indented haue confirmed to C. of D. ſuch land &c. to haue &c. vpon the condition following: In witneſs whereof aſwell I the ſaid A. of W. as the foreſaid C. of D. to theſe Indentures interchangeably haue put to our ſeales: Or elſe thus. In witneſs whereof to one part of this Indenture I haue put to my ſeale, and to the other part of the ſame Indenture the foreſayd C. of D hath put to his ſeale &c.

And it ſeemeth that ſuch an Indenture made in the firſt perſon, is as good in the law as the Indenture made in the third perſon, when both parties haue thereto put their ſeales, for in the Indenture made in the third perſon or in the firſt perſon, if mention be made that the grantor hath ſet his ſeale onely, & not the grantee, then is the Indenture only the deed of the grantor. But where mention is made that the grantee hath ſet his ſeale to the Indenture &c. then is the Indenture aſwell the deed of the grantor, as the deed of the grantee, & thus it is the deed of both, and alſo euery part of the Indenture is the deed of both parties in ſuch caſe &c.

Alſo it ſhall be made by Indenture to a man

man for terme of his life, the remainder to an other in fee vpon condition &c. and if the Tenant for terme of life hath set his seale to one part of the Indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this case he is holden to performe all the conditions comprised within the Indenture, as the tenant for terme of life ought to doe in his life, and yet he in the remainder neuer sealed any part of the Indenture: But the cause is, that insomuch that he entreth and agreeth to haue the Land by force of the Indenture, he is holden to perform the condition within the Indenture, if he will haue the Land &c.

Also if a feoffement be made by deed Poll vpon condition &c. And for this that the condition is not performed, the Feoffour entreth and happeth the possession of the deede Poll, if the feffee bring an action of that entry against he Feoffor, it hath beene a question, if the feffor may plead the Condition &c. by the deede Poll against the Feoffee: And some haue said nay, insomuch that it seemeth vnto them, that a deed Poll, and the propertie of the same deed appertaineth to him to whom the deede is made, and not to him that made the deede, and insomuch that such a deed appertayneth not to the Feoffor, it seemeth to them that he may not plead this deed &c. And other haue sayd the contrarie, and haue shewed diuers causes. One is, if the case be such, that in the action be-

betweene them the feffee plead the same deed, & shew this to the court: In this case inſomuch that the deed is in the Court, the Feoffor may shew to the Court, how in the deed be diuers conditions to be performed of the part of the feoffee, and for this that they be not performed, he entreed &c. and thereto he shalbe receiued: by the same reason when the feoffor hath the deed in hand, & sheweth it to the court, he shalbe wel receiued to plead of this &c. and namely when the feoffor is priuie to the deed, for he ought to be priuie to the deed when he made the deed.

Also if two men make or doe a trespas to an other, the which releaseth to one of them by his deede all actions personals, and notwithstanding hee sueth an action of Trespasse against the other, the defendant may well shew that the Trespas was done by him & an other his fellow, and that the plaintife by the deed that he shewed forth releaseth to his fellow all actions personals, and yet such deed appertaineth to his fellow, and not vnto him, but for this that hee may haue aduantage by the deed, if he will shew the deed to the Court, he may well plead &c. Therefore by the same reason in the other case, when the Feoffor ought to haue aduantage by the condition comprised within the deed Poll.

Also, if the feoffee gaue or graunted the deed Poll to the Feoffor, such graunt shall be good, and then the deed, and the property of the deed appertaineth to the Feoffour. And when the

Feoffour hath the deed in hand, and pleadeth it to the Court, it shall be rather understood that he came to the deed by a lawful meane then by a torcious meane. And so it seemeth that he may well plead such a deed Poll, that comprehendeth condition &c. if he haue the deed in hand &c. Ideo semper quære de dubijs, quia per rationes peruenitur ad legit rationem.

Estates that men haue vpon Condition in the Law, be such estates that haue Condition in the Law annexed to them, though it be not specified in writing, so as a man graunt by his deed to an other the office of a Parkership of a Parke, to haue and to occupie the same office for terme of his lyfe, the estate that he hath in the office, is vpon condition in the Law, that is to say, that the Parker wel and truely shall keepe the Parke, & doe that that to the office appertaineth to doe: or otherwise that it shall be lawfull to the grantor and to his heires to put him out, and to graunt that to an other if he wil &c. And such condition as is vnderstood by the law to be annexed to some thing, is as strong as if the Condition were set or put in writing. In the same maner it is of graunts of offices of Stewards, Constables, Bedels, Bailifes, and other officers. But if such office bee graunted to a man to haue & to occupie by him or by his deputie, then if the office be occupied by him or by his deputie, as it ought by the Lawe to be occupied, this sufficeth for him, or els the grantor or his heires, may put him out

as

as is aforeſaid.

Alſo, eſtates of lands or tenements may be vpon condition in the law, though that vpon the eſtate made, there was no rehearſall made of the condition: As put the caſe that a leaſe be made to the husband and his wife, to haue and to hold to them during the couerture betweene them, in this caſe they haue eſtate for terme of their two liues vpon conditiõ in the law, that is to ſay, if one of thẽ die, or if diuorce be made betweene them, that then it ſhal be lawful to the leſſor & his heires to enter &c. & that they haue eſtate for terme of their two liues, it is proued thus: Euery man that hath eſtate of frankte-nement in any lands or tenements, either hẽ hath eſtate in fee, or in fee taile, or for terme of life, or for term of anothers life, & yet by ſuch leaſe they haue franktenement, but they haue not by the grant, fee, nor taile, nor for terme of anothers life. Ergo they haue eſtate for terme of their two liues, but this is vpon condition in the law in forme aforeſaid. And in this caſe if they make waſt, the leſſor ſhall haue againſt them a writ of waſt, ſuppoſing by his writ Quod tenet ad terminum vitæ &c. but in his plee hee ſhal declare how & in what maner the leaſe was made. In the ſame maner it is, if an abbot make an leaſe to a man, to haue & to hold during the time y the leſſor is Abbot: In this caſe the leſſee hath eſtate for terme of his own life: but this is vpon condition in law, that is to ſay, y if y abbot die, or reſigne, or be depoſed,

it shalbe lawfull to his successors to enter &c.

Also, a man may see in the Bookes of Assises, An. 28. E. 3. a plee of assise in this forme that insueth. Assise of Nouel disseisin was sometime brought against one B. that pleaded to the assise, & was found by verdict that the auncestor of the plaintife demised the tenements to be sold by the defendant, & was his executor to make distribution of the money for his soule. And it was found, that a man after the death of the testator tendred him a certain summe of money for the tenements, but not to the value, & that the executor after held the tenements in his owne hand by two yeres, to the intent to have sold the tenements may better to some other: And it was found that he had all the whole after taken the profits of the tenements to his owne vse, without any thing doing for the soule of the dead. ¶ Mombray, the executor in such case is holden by the law to make such sale as soone as he may after the death of the testator, and it is found that he refused to make the sale, & so the default was in him. And also by force of the demise he was holden to have put all the profits of the said tenements to the vse of the dead, and it is found that he hath taken them to his owne vse, and so any other default is in him, wherefore it was adiudged that the plaintife should recouer &c. And so it appeareth in the said iudgement, that by force of the said demise the executor had none estate or power in the tenements, but vpon condition in the law &c.

And

And it such cases it needeth not to haue shewed any deed, rehearsing the condition &c. Ex paucis dictis intendere plurima possis. More shalbe said of cōditions in the chapter of Descents that take away entrie, & in ye chapter of Releases, & in the Chapter of Discontinuāce.

Descents.

DEscents that take away entries be in 2 moners, that is to say, where ye descent is in fee, or in fee taile. Descent it fee ye taketh away entrie is, if a mā seised of certain lands or tenements, is disseised, & the disseisor hath issue & dieth of such estate seised: Now the tenemēts descend to ye issue of ye disseisor by course of the law, as heire vnto him. And for this that the law putteth ye lands or tenements vpon the issue, & the issue commeth to the tenemēts by course of the law, and not of his owne deed, the entrie of the disseisee is taken away, & he is thereof put to his writ of Entre vpon disseisin against the heire of the disseisor to recouer the Land. 385

Descent in the tayle that taketh away entrie is, if a man be disseised, and the disseisor gineth the same Land to an other in the taile, and the tenaunt in the tayle hath issue and dyeth seised of such estate, and the issue entreth, in this case the entrie of the disseisee is taken away, and he is put to sue against the issue of the tenant in the tayle, a writ of Entrie vpon 386

disseisin &c.

And not well, that in such descents that take away entries, it behoueth that a man die seised in his demeine as of fée, or of fée taile, for dying seised for terme of life, or for terme of an others life, shal neuer take away the entrie &c.

Also, a descent of reuersion, or of remainder shall neuer take away entrie &c. so that in such cases that take away entries by force of descents, it behoueth that he that died seised haue fée & franketenement at the time of his dying, or else such descent taketh not away entrie.

Also as it is said of descents ꝑ descend to the issue of him that dieth seised &c. ꝑ same Law is where they haue no issue, but the tenements descēd to ꝑ brother, or to the sister, or to the vncle, or to some other cosin of him, ꝑ dieth seised &c.

Also, if there be Lord and Tenant, and the Tenant be disseised, and the disseisor alieneth to an other in fée, & the alienee dyeth without heire, and the Lord entreth as in his escheat: In this case the disseisee may enter vpon the Lord, for this, that the Lord commeth not to the Land by descent, but by escheat.

Also, if a man seised of certaine land in fée, or in fée taile vpon cōdition to yéld certain rent, or vpon other condition, though that such Tenant seised in fée, or in fée taile, die seised, yet if ꝑ cōdition be broken in their life, or after their decease &c. this taketh not away the entrie of the feoffor, nor of the donor, or of their heirs, for this that the tenancy is charged with the condition,

dition, and the estate of the tenancie is conditionall in whose hands soeuer the tenancy shall come &c.

Also, if such a tenant vpon condition be disseised, & the disseisor die therof seised, & the land descendeth to ye heire of ye disseisor, now ye entry of the tenant vpon conditiō that was disseised is taken away, but if the condition be broken &c. thē may the feoffor or the donor ye made the estate or their heires enter &c. Causa qua supra.

Also, if a disseisor dye seised, & his heire enter &c. the which endoweth the wife of the disseisor of the third part of the tenements, in this case, as to the third that is assigned to the wife in dower, incontinent anon after that the wife entreth and hath possession of the same third part, the disseisée may lawfully enter vpon the possession of the wife in the same third part. And the cause is for this that when the wyfe hath her dower she shall be adiudged in, rather immediatly by her husband then by the heire, & so as to the frankte nement of the same third part, the descent is defeated. And so yée may sée how before the dowment the disseisée might not enter in any part &c. and after the dowment he may enter vpon the wife, and yet hee may not enter vpon the other two parts that the heire of the disseisor hath by descent &c.

Also, if a woman be seysed of Land in fee, whereof I haue right and title to enter, if the woman take an Husband and haue issue betweene them, and after the wife dyeth seised,

and after that the husband dyeth, and the issue entreth &c. in this case I may enter upon the possession of the issue, for this that the issue claimeth not to the tenements immediatly by descent after the death of his mother. An. 9. H. 7. fol. 24. it is holden contrarie.

Also, if a disseisor infeoffe his father, & the father entreth and dieth of such estate seised, by which the Tenements descend to the disseisor, as to the sonne and heire &c. In this case the disseisee may well enter upon the disseisor, notwithstanding the descent, for this, that as to the disseisin, the disseisor shalbe adiudged in but as the disseisor, notwithstanding the descent.

Also, if a man seised of certaine land in his demeane as of fee, hath issue two sonnes & dyeth, & the yonger sonne entreth by abatement in the Land, the which hath issue, and of this dyeth seised, and the tenements descend to the issue, and the issue entreth into the Land: In this case the elder sonne or his heires may enter by the Lawe upon the issue of the yonger sonne, notwithstanding the descent, for this, that when the yonger sonne abated in the land after the death of his father, before any entrie of the elder, the lawe intendeth that he entreth in clayming as heire unto his Father, and for this that the elder brother claymeth by the same title, that is to say, as heire unto his father, he & his heires may enter upon the issue of the yonger brother, notwithstanding the descent &c. for this, that they claim by one selfe

title,

title. And in the ſame maner it ſhall be if there be many deſcents from one iſſue to an other iſſue of the yonger ſonne &c. But in ſuch caſe, if the father were ſeiſed of certain lands in fee, and hath iſſue two ſonnes and dyeth, and the elder ſonne entreth and is ſeiſed &c. And after the yonger ſonne diſſeiſeth him, by which diſſeiſin he is ſeiſed of fee, and hath iſſue, and of ſuch eſtate dyeth ſeiſed, then the elder brother may not enter, but is put to his writ of Entre vpon diſſeiſin for to recouer the land. And the cauſe is for this that the yonger brother commeth to the Tenements by a wrong diſſeiſin made vnto his elder brother, & for that wrong the Law may not intend that he claymeth as heire to his father, no more then if a ſtraunge perſon had diſſeiſed the elder brother that neuer had any title &c. And ſo may yee ſee the diuerſitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in ſuch caſe &c. And where the elder brother entreth after the death of his father, & is diſſeiſed by the yonger brother &c. In the ſame maner if a man ſeiſed of certain land in fee, hath iſſue two daughters, & dyeth, & the elder daughter entreth in the land, claiming all the Land to her, and ther of onely taketh the profits, and hath iſſue & dyeth ſeiſed by which her iſſue entreth, which iſſue hath iſſue and dyeth ſeiſed, and the ſecond iſſue entreth &c. et ſic vlera, yet the yonger daughter and her iſſue, as to the halfe may enter vpon

euery iſſue of the elder daughter, notwithſtanding ſuch deſcent, for this that they clayme by one ſelfe title &c. But in ſuch caſe if both two ſiſters come into the Land to enter after the death of their father, & thereof were ſeiſed, and after the elder ſiſter therof diſſeiſed the yonger ſiſter of that that to her belongeth, & thereof is ſeiſed in fee, & hath iſſue, & of ſuch eſtate dyeth ſeiſed, by which the Tenements deſcend to the iſſue of the elder ſiſter, then the yonger ſiſter or her heires may not enter &c. Cauſa qua ſupra.

Alſo, if a man ſeiſed of certaine Land hath iſſue two ſonnes, and the elder brother is baſtard, and the ponger brother Mulier, and the father dyeth, and the baſtard entreth and claymeth as heire vnto his father, and occupyeth the Land all his lyfe without any entry made vpon him by the Mulier, and the baſtard hath iſſue and dyeth of ſuch eſtate ſeyſed in Fee, and the Land deſcendeth to his iſſue, and his iſſue entreth &c. in this caſe the Mulier is without remedy, for he may not enter, nor he ſhall haue no action for to recouer the land, for this that it is an auncient law in ſuch caſe vſed. But it hath beene an opinion of ſome men, that that ſhall be vnderſtood where the father hath a ſonne a baſtard by a woman, & after her wedeth the ſame woman, and after the eſpouſeis he hath iſſue by the ſame woman a ſonne or a daughter Mulier, & the father dieth &c. if ſuch a Baſtard enter &c. and hath iſſue, and dyeth ſeiſed &c. Then ſhall the iſſue of ſuch a baſtard

haue

haue the land cleerely to him, as it is aforesaid &c. and not any other Bastard borne of the mother that was not espoused to his Father. and this is a good and reasonable opinion: For such a bastard borne before the espousels solempnized betweene his father and his mother, by the Law of holy Church is Mulier, though that by the Lawe of the Land he is a Bastard born, and so he hath colour of entrie as heire to his Father, for this that he is by one law Mulier, that is to say, by the Law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, inasmuch that he may not in no law be sayd Mulier &c. For such a bastard is sayd Quasi nullius filius. But in such case aforesaid, where the bastard entreth after the death of his Father, and the Mulier putteth him out, and after the Bastard disseiseth the Mulier, and hath issue, and dyeth seised, and the issue entreth, then the Mulier may haue a writ of Entre vpon disseisin against the issue of the bastard, and recouer the land &c. And so may yee see the diuersitie where such a bastard continueth his possession all his lyfe without any interruption, and where the Mulier entreth and interrupted the possession of such a Bastard.

Also, if a child within age haue title & cause to enter into any Lands or tenements vpon an other that is seised in Fee, or in Fee taile of the same lands or tenements, if such a man

that

that is ſo ſeiſed dye of ſuch eſtate ſo ſeiſed, and the tenements deſcend to his iſſue, during the time that the childe is within age, ſuch deſcent ſhall not tolle the entrie of the childe, but he may entter vpon the iſſue that is in by deſcent &c. for this that no laches ſhall be adiudged in a child within age in ſuch caſe &c.

Alſo, if the husband and his wife, as in right of the wife haue title and right to enter in the Tenements that an other hath in fée, or in fée tayle, & ſuch a Tenant dyeth ſeiſed &c. In ſuch caſe the entrie of the husband is taken away vpō the heire that is in by deſcēt. But if ỹ husband dy, then ỹ wife may wel enter vpō ỹ iſſue by which is in deſcent, for this ỹ the laches of the husband ſhall not turne to the wife & to her heires in preiudice nor in damage in ſuch caſe, but that the wife & her heires may well entter where ſuch deſcēt is during the couerture &c.

Alſo, if a man that is not of whole minde, that is to ſay in Latin, Qui non eſt compos mentis, hath cauſe to enter in any ſuch Tenements, if ſuch deſcēt vt ſupra be had in his ipſe during the time that he was out of his mind, and after dye, his heires may well enter vpon him that is in by deſcent. And in this may yee ſée a caſe that ỹ heire may enter, & yet his auncestor that had the ſame title may not enter, for he that was out of his mind at the time of ſuch deſcent, if he will enter after ſuch a deſcent, if an action vpon this be ſued againſt him, he hath nothing for him to plead, or to help him, but to

ſay

say that he was out of mind at the time of such descent &c. And he shall not be receiued to say this, for this that no man of full age shall be receiued in any plee by the Law to disable his owne person. But the heire may well disable the person of his auncestor for aduantage of the heire in such case, for this, that no laches may be adiudged by the law in him ẏ hath no discretion in such case. And if such a man out of his mind make a feoffement &c. he may not enter, ne haue a writ called Dum non fuit cõpos mentis &c. Causa qua supra. But after his death his heir may wel enter, or haue the same writ Dũ nõ fuit cõpos mẽtis at his election &c.

Also, if I be disseised by a child within age that alieneth to another in fee, and the alienee dyeth seised, and the tenements descend to his heire, the child being within age, mine entrie is taken away. But if the child within age enter vpon the heire that is in by descent, as he wel may, for this that the descend was during his nonage, then I may well enter vpon the Disseisor, for this, that by his entrie he hath defeated and annulled the descent.

And in the same manner it is, where I am disseised, & the disseisor maketh a feoffement in fee vpon condition &c. & the feoffee dieth of such estate seised &c. I may not enter vpon the heire of the feoffee. But if the condition be broken, so that by such cause the feoffor entreth vpon the heire, now may I wel enter, for this that whẽ the feoffor or his heires enter for the condition

broken,

broken, the descent is vtterly defeated.

Also, if I be disseised, and the disseisor hath issue and entreth into Religion, by force of which the Lands descend to his issue, in this case I may well enter vpon the issue, and yet there was a descent: But for this that such descent commeth to the issue by the Fathers deed, that is to say, for this that he entred into religion &c. and his descent commeth not to him by the deed of God, that is to say, by death &c. mine entrie is congeable and lawfull, for if I straigne an Assise of Nouel disseisin against my disseisor, though he after enter into Religion this shall not abate my writ: But my suit this notwithstanding shall abide in his force and strength, & my recouerie against him shall be good. By the same reason the descent that came to his issue by his owne deed may not put me from mine entrie &c.

Also, if I let to a man certaine Lands for terme of xx. yeares, and an other disseiseth me, and putteth out the termor, and dyeth seised, and the Tenements descend vpon his heire, I may not enter, and yet the Lesse for terme of yeares may well enter, for this that by his entrie he putteth not out the heire that is in by descent from the franketenement that vnto him descended, but onely clayme to haue the tenements for terme of yeares, the which is no expulsing of the Franketenement of the heire that is in by descent. But otherwise it is where my tenant for terme of life is disseised

&c.

&c. Causa quæ supra.

Also it is said that if a man be seised of tenements in fee by occupation in time of warre, & dyeth thereof seysed in time of warre, & the tenemēts descend to his heire, such descent putteth out no man of his entry. And of this a man may see a plee in a writ of Ayel, An. 7. E. 2.

Also that no dying seised (where all the tenements come to another by succession) shall take away the entry of any person &c. For of Prelates, Abbots, Priors, Deanes, or Parsons of Churches &c. though that there were 20. successors, this putteth no man from his entry &c. More shall be said of descents in the Chapter of Continual claim &c. See ye statute 32. H. 8. cap. 33.

Continuall claime.

Continuall claime is, where a man hath right & title to enter in any Lands or tenemēts whereof an other is seised in fee, or in fee tayle, if he that hath title to enter make continuall claime to the Lands & tenements, before the dying seised of him that holdeth the tenements. Then though such a tenant die thereof seysed, and the Lands and tenements descend to his heire, yet may he that hath made such claime, or his heires, enter into the Lands and tenements descended, because of the continuall claime made, notwithstanding such descent. As in case a man be disseised, and the disseisee ma-

414

maketh continuall claime to the tenements in the life of the Disseisor, though the disseisor dye seised in fee, and the Land descendeth unto his heires, yet may the disseisee enter upon the possession of the heire, notwithstanding such descent.

415 In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or he in the remainder may enter upō the alienee. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, & the tenements because of the dying seised of the alienee descend unto the heire of the aliener, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or he in the remainder that hath cause to enter upon the alienee, made continuall claim to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life &c.

416. Also, if Lands be let unto a man for terme of his lyfe, the remainder unto an other for terme of lyfe, the remaindee unto the third in fee, if the Tenant for terme of lyfe alien to an other in fee, and he in the remainder for terme of life maketh continuall claime unto the land before the dying seised of the alienee, & after the alienee dyeth &c. and after he in the remainder for terme of lyfe dyeth before any entrie made by him: In this case he in the remainder in Fee, may enter upon the heire of the alienee,

because

because of continuall claime made by him that had ye remainder for terme of lyfe, for this that such right that he hath to enter, shall go and remaine to him in the remainder after him, insomuch that he in the remainder in fee may not enter vpon the alienee in fee during the lyfe of him in the remainder for terme of lyfe, and because he might not make continuall claime, for none may make continual claime but when he hath title to enter. But it is to be shewed to thee my child how & in what maner continuall claime shalbe made, & to learne this, 3. things there be to be vnderstood. The first thing is, if a man haue cause to haue any Lands or tenements in diuers townes within one Shire, if he enter in any parcell of the Lands or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within al the townes in the same shire, by such entry he hath as good possessiõ & seisin of such lands or tenements whereof he hath title to enter, as if he had entred into euery parcell, and this seemeth great reason, for if a man will infeoffe another without deed, of certaine lands or tenements ye he hath in many townes within one shire, & he will deliuer seisin to the feoffee of parcell of the tenements within one towne in the name of all the lands & tenemẽts that he hath in ye same towne, & in all the other townes &c. all the said tenements &c shall passe by force of the said Liuerie of seisin to him to whom such feoffement in such maner is made:

And yet he to whō such intery of seisin is made hath no right to al the lands & tenements in all the townes, but by reason of the intery of seisin made of parcell of ꝑ lands or tenements in one towne, a multo fortiori it farmeth good reason that when a man hath title to enter into lands or tenements in diuers townes within one shire before any entry by him made, that by the entrie of him made in parcell of the tenements in one towne, in the name of all the lands & tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, & by such entrie he hath possession and seisin in deed, as if he had entred into euery parcel &c.

419 The second is to vnderstand, that if a man hath title to enter into any lands or tenements, if he dare not enter into the same Lands or tenements, nor in any parcell thereof for doubt of beating, or for doubt of maiming, or for doubt of body, if he goe & approach as nigh ꝑ tenements as he dare for such doubt, & claime by words the Tenements to be his, incontinent by such claime he hath a possession & seisin in the tenements, as well as if he had entred indeed though he had neuer possession or seisin of ꝑ same lands or tenements before the ꝑs claime. And that the law is such, it is well proued by a plee of an assise in the booke of Assises, Ann. 3. E. 3. P. 23. the tenor of which ensueth in this forme.

In the County of Dorset before the Iustices it was found by verdict of Assise, that the plaintife which had right by discent of heritage,

tage, to haue the Tenements put in plaint at the time of the death of his auncestor, which was dwelling in the Towne where the tenements lieue, and by word claymeth the tenements among his neighbours, but for doubt of death he dare not approch vnto the tenements, bringeth an Assise, & vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said Continuall claime shal serue & help him that made the claime & his heire. And as to this it is to wit, that he that hath time to enter, when he will make his claime, if he dare approch vnto the Land, then it behoueth him to goe vnto the land, or to parcell of it, & make his claime: And if he dare not approch vnto the Land for dread of beating, maiming, or death, then it behoueth him to goe, & to approch as nigh as he dare to the land, or parcell thereof, & make his claime. And if his aduersary that occupieth the land die seised in fee, or in fee taile, within a yeare & a day after such claime made, by which the tenements descend vnto his sonne, as heire vnto him, yet may he that made the claime, enter vpon the possession of the heire. But in this case after the yeare & the day of such claime was made, if none other claime be made, if the father then dy seised the morrow after the yere & the day, or at an other day after &c. then may not he that made the claim enter. And therefore if he that made the claim will be sure alway that his

entrie shall not be taken away by such discent, it behoueth him within the yere and the day after the first claime, to make another claime, in the same manner: & within the yere & the day after the second claime, to make the 3. claime in the same manner: & within the yere & the day after the third claime, to make another claime &c. that is to say, to make another claime within euery yere & day next after euery claime made during the life of his auncestor, & then at what time that his auncestor died, his entry shall not be taken away by discent. And such claime made in such manner is most commonly taken and called continuall claime of him that made the claime. But yet in case aforesayd, where his auncestor died within the yere and the day next after the first claime, this is in the law a continuall claime, inasmuch that his auncestor died within the yere & the day after the same claime, so that there is no need for him that made the claime, to make any other claime, but at what time he shall within the same yere & the day &c. Also if his auncestor be disseised within the yere & day after the claime, & the disseisee dieth thereof seised within the yere and the day &c. thus dying seised shall not hurt him that made the claime, but that he may enter &c. For whosoeuer he be that died seised within yere & the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised, and many discents within the yere and the day &c.

Also

Also, if a man be disseised, and the Disseisor die seised within the yeere & the day next after the disseisin done, whereby the tenements descend to his heire, in this case the entrie of the disseisee is taken away, for the yeere & the day that should helpe the Disseisee in such case &c. shall not be taken from the time of the title of entrie grown unto him, but only from the time of the claim by him made in manner aforesaid: & for that cause it shall be good for such a disseisee for to make his claime &c. in as short time as he may after the disseisin &c.

Also, if such a disseisor occupy the said by xl. yeres without any claim made by the disseisee &c. & the disseisee by little space before the death of the disseisor make claime in the form aforesaid, if so it fortune that within a yere & a day after such claime the disseisor die seised &c. the entrie of the disseisee is congeable, & for this it shalde good for such a man that made no claim that hath title to enter &c. whe he hereth that his adversary lieth sick to make his claime &c.

Also, as it is said in the cases put before, where a man hath title to enter because of a disseisin &c. The same Law is where a man hath right to enter because of any other title &c.

Also in the said Presidents may yet know my claime two things. One is, where a man hath title to enter upon any tenement in tayle, if he make any such claime unto the land &c. then is the state of the title defended, for that claime is as an entre made by him, and is of the same

effect in the Law, as if he were vpon the same Tenements, and had entred in the same tenements, as is aforesaid. And then when the tenant in taile immediatly after such claime continueth his occupation in the tenements, this is a disseisin made of the same Tenements vnto him that made the claime, Et sic per consequens, the Tenant then hath fee simple.

The second thing is, that as oft as he that hath right to enter maketh such claime, & this notwithstanding his aduersary continueth his occupation &c. so oft the aduersary doth wrong & disseisin to him that made the clayme. And for this cause so oft may he that made the same clayme for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suũ fregit &c. to recouer his damages &c. or he may haue a writ vpon the statute of king Rich. the 2. made the 5. yere of his raigne, supposing by his writ that his aduersary hath entred into the Lands or tenements of him that made the claime, where his entrie was not giuen by the Law &c. & by such action he shall recouer his damages &c. And if the case be such, that the aduersary occupy the tenements with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made y claime, for euery such time haue a writ of forcible entry, & recouer his treble damages.

Also here it is to see, if the seruant of a man that hath title of entrie, may by the commandement of his Master make continuall claime for

for his Master in his name, & it seemeth that in some cases he might do this, for if he by his commandement come to any parcell of the lād and there maketh claime &c. in the name of his Master, this clayme is good for his Master. for this that he hath done all that it behoueth his Master to doe in such case &c.

Also if a Master say vnto his seruant that he dare not go into the lād, nor into any parcel of the land for to make any claime &c. and dare not approch more nigh vnto ꝑ same land, saue to such a place called Dale, & commandeth his seruāt to go to the same place of Dale, & there to make a claime for him &c. if the seruant do &c. this seemeth as good claime for his master, as if he had been there in his owne person, for that the seruant did all that his Master durst doe, and ought to doe by the lawe in such case.

Also, if a man be so sicke, or so lame that he may not in any maner come to the land, nor to any parcell of the same, or if there be a reculs that may not because of his order goe out of his house &c. if such a manner of person commaund his seruant to goe and make claime for him &c. and the seruāt dare not go to the land, nor to any parcel thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the Land as he dare for such dread, and maketh his claime &c. for his Master, it seemeth that such claime for his Master, is good and strong in lawe, for els his Master should be in too great mischiefe, for

it may well be that such a person that is sicke, or lame, or recluse, cannot find any seruant that dare goe vnto the land, nor to any parcell of it to make the claime for him &c. But if the Master of such a seruãt be in good health and may & dare well to goe to the tenements, or to parcell of it to make his claim for him &c. if such a Master command his seruant to goe to some parcell of the land and make claim for him &c. And when the seruãt is going to do the commandement of his Master, he heareth by the way such things that he dare not goe to any parcell of the land for to make any claime for his Master, & for that cause he goeth as nigh vnto the land as he dare for doubt of death, and there he maketh claim for his Master in the name of his Master &c. It seemeth that the doubt in the law in such case shall be if such claime auaile his Master or not, for this that the seruant did not all that his Master at the time of commandement ought to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisin doth descend, during the time that the Disseisee is in prison, by which the tenements descended to the heire of the Disseisor, they haue said that this shall not hurt the disseisee that is in prison, but that he may well enter notwithstanding such descent, for this he may not make continuall claime whe he was in prison. And also if such a one that is in prison be impleaded in an action of Det or Trespas, or in appeal of robbery &c.

he

he shall reuerse such outlawrie by writ of Error &c. because he was in prison at the time of the outlawrie against him pronounced.

Also if a recouerie be had by default against such a one that is in prison, he shall anoide the iudgement by a writ of Error for this that he was in prison at the time of such default made &c. and because that such matters of Record shall not hurt them that be in prison, but that it shalbe reuersed &c. a multo fortiori, It seemeth that a matter in deed, that is to say, such deceit had when he was in prison shall not hurt him &c. specially for this, that he may not goe out of prison to make continuall claime &c.

And in the same manner it seemeth to them where a man is out of the realme in the Kings seruice for business of the realme, if such a man be disseised when he is in the seruice of ye king. that such defect shal not hurt the disseisee, but for this that he might not make continuall claime &c. it seemeth vnto them, that when he commeth againe into England, he may enter againe vpon the heire of the disseisor &c. For such a man shall reuerse an outlawrie that is pronounced against him during the time that he is in seruice &c. Ergo a multo fortiori he shall haue aid by the law in the other case &c.

Also others haue said, that if a man be out of the Realme, though he be not in the Kings seruice, if such a man being out of the Realme be disseised of Lands or tenements within the Realme and the disseisor dyeseised &c. the disseisee

seisé hauing out of the Realme, it serueth vnto them, that when the disseisee commeth into the Realme, that he may well enter vpon the heire of the disseisor &c. and this serueth vnto them for two causes: One is, that he that is out of the realm, may not haue knowledge of the disseisin made vnto him by vnderstanding of the law, no more then that a thing done out of the Realme may be tried within this Realme by the oth of xij. men, and to compell such a man to make continuall claim, which by the vnderstanding of the Law can haue no knowledge or Cognisance of such disseisin made or done, this hath inconuenient, namely when such a disseisin is done vnto him, when he was out of the Realme, and the dying seised was done when he was out of the realm, for in such case he may not by possibilitie after the common presumption make no continuall claime: But otherwise it shall be if the disseisee were within the Realme at the time of the disseisin, or at the time of the dying seised of the disseisor &c. In other matter they alledge for a proofe, that before the statute of K. E. the 3. made the 34. yeare of his raigne, by which statute Proclaime is out &c. the law was such, that if a fine were leuied of certain lands or tenements, if any that was a stranger to the fine had right to haue & to recouer the same lands or tenements, if he came not and made his claime ther of within a yere and a day next after the fine leuied, he shal be barred for euer, Quia dicebatur, quod finis

finem

finē litibus imponebat. And that the law was such, it is proued by the statute of West. the 2. De donis condicionalibus, where it speaketh, if the fine be leuyed of tenements giuen in the tayle &c. Quod finis ipso iure sit nullus, nec habeant heredes, aut illi ad quos spectat reuersio (licet plenæ ætatis fuerint, in Anglia, & extra prisonā) necesse apponere clameū suum. So it is proued, that if a straunger that hath right vnto the tenements, if he were out of the realm at the time of the fine leuyed &c. shall haue no damage, though that such fine was matter of record: by greater reason it seemeth vnto them that a disseisin & discent that is matter in deed shal not so grieue him that was disseised when he was out of the Realme at the time of that disseisin, and also at the time that the Disseisor dyed seised &c. but that he may well enter notwithstanding such descent. Also inquire if a man be disseised, & he arraign an Assise against the disseisor, and the recognitors of the assise chaunte for the plaintife, & the Iust. of Assise will be aduised of their iudgements vntill the next assise &c. & in the mean season the disseisor dieth seised &c. yet the said suit of the assise shall be taken in Lawe for the disseisee a continuall claim, insomnch ẏ no default was in him &c.

Also inquire if an Abbot of a monastery dy, & during the time of vacation, a man wrongfully entreth in certaine parcels of land of the Monasterie, claiming the Land vnto him and his heires, and of that estate dyeth seised, and the

the lands descendeth unto his heires, and after that an Abbot is chosen, & make Abbot of the same house, a question is if the Abbot may enter upon them or not. And it seemeth to some that the Abbot may well enter in this case, for this that the Convent in time of vacation was no person able to make continual claim, for no more than they person able to sue an action, no more be they person able to make continual claime. for & Convent is but a dead body without head. for in time of vacation a grant made unto them is void, & in this case an Abbot may not have a Writ of Entre upon disseisin against the heire, for this that he was never disseised. And if & Abbot may not enter in this case, the he shall put unto his Writ of Right, & which shall be hard for the house. By which it seemeth to the that the Abbot may well enter &c. Quæras de dubijs, Legem bene discere si vis, Quærere dat sapere quæ sunt legitima vere.

¶ Releases.

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RElease be in divers manners, that is to say: Release of right that a man hath in lands or tenements: & release of actions reals & personals, & of other things. Release of all the right that a man hath in lands or tenements &c. is commonly made in such forme, or to such effect. Noverint vniuersi per presentes me, A.B. remisisse, relaxasse, & omnino de me & hæredibus meis quietũ clamasse E. de D. totum ius, titulum, & clameũ meũ quæ habui, habeo, vel quouismodo in futur habere potero, de,

de, & in vno messuag' cũ pertin' in P. And it is to be vnderstood, that these words (Remisisse & quiet' clamasse) be of such effect as these words, Relaxasse &c.) And also these words which be cõmonly put in such deeds of Releases &c. that is to be vnderstood, Quæ quouismodo in futurũ habere potero, be as words void in the law, for no right passeth by a Release, but the right that the relessor hath at the time of his release made: For if it be father & sonne, & the father be disseised, & the son liuing his father releaseth by his deed to the disseisor all the right that he hath, or may haue in the same tenemẽts, without clause of warrantize &c. and after the Father dyeth, the sonne may lawfully enter vpon the possessiõ of the disseisor, for this that he had no right in the land lyuing his father, but the right descended vnto him by descent after the release made by the death of his father. Also in a release of all the right that a man hath in certaine lands, it behaueth vnto him to whom the release is made in such case, that he hath a freehold in the Lands in deed, or in the law, at the time of the release made, for in euerie case where he to whom the release is made hath a freehold in deed or in law at the time of the release made &c. the release is good. Franktenement in law is, as if a man haue disseised another, & thereof dieth seised, by the which ẽ tenement descend vnto his son, howbeit that his sonne enter not in the tenements, yet he hath a franktenement in the law, which by force of the

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the descent is cast vpon him, and therefore the release made is good enough. And if he take a wife so being seised in the law, howbeit that he never enter in deed, & dieth, his wife shall haue thereof her dower. And in such case of release of all his right, howbeit that he to whom the releas is made, ne hath any thing in the frankteuement, neither in deed nor in law, yet the releas is good enough. As if the disseisor haue let land that he had by disseisin to an other for terme of his life, sauing the reuersion to him, if the disseisee or his heires release vnto the disseisor all the right &c. that release is good, for that that he to whom ye releas is made, had in him a reuersiō at the time of the releas made. In the same maner if a leas be made to a man for terme of life, the remainder vnto an other for terme of life, the remainder vnto the third in tayle, the remainder vnto the fourth in fee, if a stranger that hath the right vnto the land releas all his right vnto any of them in the remainder, such releas is good, for this that euery of them hath a remainder vested in himself: yet if the tenant for terme of life be disseised, & after he that hath right (the possession being in the disseisor) releas vnto one of them to whom the remainder was made, all his right &c. that release is voyde, for that that he ne had in him no remainder in deed, but all onely a right of a remainder at the time of the releas made.

And note, that euery releas made to him that hath a reuersion or remainder in deed, shall

serue

serue & help them that haue the franktenemēt, aswell as them to whom the release is made, if the tenant haue the release in his hand &c.

In the same maner a releas made to a tenāt for terme of life, or to a tenant in the taile, shall enure vnto them in the reuersion, or to them in the remainder, as well as to the tenant of the Franktenement, & they shal haue as great aduantage of that, if that they may shew it.

And if there be lord and tenant & the tenant is disseised, and the Lord releaseth vnto the disseisee all the right that he hath in the seigniorie, or in the land, that release is good, and the seigniory is extinct. And if the goods of the disseisee bee taken, and of them the disseisee sueth a Replegiare against the lord, he shal compell the Lord to auow vpon him, & if he wil auow vpon the disseisor, then vpon the matter shewed, the auowrie shall be abated, for the disseisee is Tenant to him in right and in Lawe.

Also if Land be giuen to a man in the taile, reseruing vnto the donor & his heirs a certain rent, if the donee be disseised, & after the donor releaseth to the donee all the right that he hath in the land, and after the donee entreth into the land vpon the disseisor: in this case the rent is gone, for this that the Disseisee at the time of the release made was tenant in right, & in law vnto the donor, and the auowrie of fine force ought to be made vpon him by the donor of the rent behind &c. But yet nothing of the right of the Land, that is to say, of the reuersion shall

passe

passe by such release for this that the Donee to whom the releas was made then had nothing in the land but only a right, & so the right of the land may not passe by such releas to the donee.

In the same maner it is, if a Lease be made to one for terme of life, reseruing to the Lessor and to his heires certaine rent, if the Lessee be disseised, & after the lessor releaseth to the lessee and to his heires, and after the lessee entreth, howbeit that in this case the rent is extinct, yet nothing of the right passeth &c. Causa qua supra. But if it be verie Lord and very tenant, and the tenant maketh a feoffement in fee, the which feoffee never became tenant to the lord &c. if the Lord releas to the feoffor all his right &c. that release is void, for this that the feoffor hath no right in the Land, and he is no tenant in right to the Lord, but only tenant as for the auowrie to be made, and he shall neuer compel the Lord to auow vpon him, for the Lord may auow vpon the feoffee if he will. Otherwise it is where the very tenant is disseised, as in case aforesaid, for if the very tenant that is disseised holdeth of the Lord by knights seruice & dieth, his heire being within age, the Lord shal haue and seise the ward of the heire. And so he shall not haue the ward of the feoffor that made the feoffement in Fee, and so it is a great diuersitie betweene the two cases.

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Also, if a man enfeoffe another in his Land vpon trust, and to the intent that he shall performe his last will, and the feoffour occupieth the

the same at the swill of his Feoffees, and after the feoffees release by their deed unto the feoffour all the right &c. This hath been in question if such release be good, or not, and some have sayd that such release is voyd, for this that no priuitie was betwene the feoffees and their Feoffour, insomuch that no Lease was made after such feoffement by the feoffees and their feoffour, to hold at their swill &c. and some haue said the contrarie, & that for two causes. One is, that when such feoffements are made upon confidence, to performe the swill of the feoffor, that it shall be understood by the Law, that the feoffour by and by ought to occupy the land at the swill of his feoffees, and so it is such manner of priuitie betwene them, as if a man make a feoffement to other persons, and they incontinent upon the feoffement will say & grant that the feoffour shall occupie the land at their swill &c. An other cause they alleadge, that if such land be worth xl s. by yeere &c. Then such feoffor shalbe sweene in Assises, and in other Inquests, in plees reals, and also in plees personals, of what great summes soeuer that the plaintifes will declare &c. And this is by the Common Law of the land. Ergo this is for a great cause, and the cause is that the Law will that such feoffors and their heires ought to occupie &c. And to take thereof the rent & all the profits, and all maner of issues and reuenues &c. as though the tenements were their owne without interruptiō of ye feffees, notwithstan-

ding such feoffements, Ergo the same law gi-
ueth a priuity betwéen such feoffors, and their
feoffées vpon confidence &c. For which cau-
ses they haue sayd, that the Releas made by
such feoffées vpon confidence to the feoffor, or
to his heires &c. so occupying the land &c. shall
be good enough &c. And this is the better opi-
nion as it seemeth, Quære since the statute 27.
H. 8. cap. 10. Also Releases after the matter
in déed sometime haue their effect by force to
enlarge the estate of them to whom the release
is made; As if I let certaine Land to a man
for terme of yeeres, by force whereof he is pos-
sessed, and I release vnto him all the right
that I haue in the land without more words
set or put in the déed, and deliuer vnto him the
déede: Then he hath estate but for terme of
his lyfe, and the cause is for this, that when
the Reuersion or the Remainder is in a man,
the which will enlarge by his releas the estate
of the tenant &c. he shall haue no greater estate
but in the manner and forme as if such a Les-
sour were seysed in Fee, and will by his déed
make estate to one in a certaine forme &c. and
deliuer vnto him seysin by force of the same
déed, if in such déed of Feoffement there bée no
word of inheritance &c. Then he hath estate
but for terme of lyfe &c. and so it is in such
Releas made by him in the Reuersion, or in
the remainder: For if I let land to a man for
terme of lyfe, and after I release vnto him
all my right without more saying in the re-

lease

sons, his estate is not inlarged. But if I release unto him & to his heires of his body engendred, then he hath fee taile. And if I release unto him & to his heires, then hath he fee simple. Also it behoueth in such case to specifie in the deed, what estate he to whom the release is made shall haue &c. And sometime a release shall enure to set and put the right of him that maketh the release, to him to whom the release is made: As a man is disseised, and he releaseth unto the Disseisor all the right that he hath: In this case the disseisee hath his right, so that where his estate before was wrong, now by the release it is lawful & right. But note well, that when a man is seised in fee simple of any lands or tenements, and an other will release unto him all the right that he hath in the same tenements, it needeth not to speak of the heirs of him to whom the release is made, for this that he had fee simple at the time of the release made: for if the release were made to him and to his heires for one day, or for one houre, this shall be as strong unto him in the Law, as he had released to him and to his heires, for when his right was gone from him at one time by his release without any Condition &c. to him that had fee simple, it is gone for euer: But where a man hath a reuersion or remainder in fee simple at the time of the release made, there if he will release to the Tenant for terme of yeares, or for terme of life, or in the taile, it behoueth to determine the estate

that he to whom the release is made shall haue by force of the same releas: For this that such releas goeth to inlarge the estate &c. of him to whom the releas is made: But otherwise it is where a man hath but a right vnto the land & had nothing in ye reuersion nor in the remainder in deed: for if such a man releas all his right to one that is tenant of the franktenement, all his right is gone, though that no mention be made of the heires of him to whom the releas is made. For if I let land to a man for term of lyfe, if I after releas vnto him for to inlarge his estate, either it behoueth that I releas vnto him & to his heires of his body ingendred, or to him and to his heires males of his body begotten, or by such semblable estate &c. or otherwise he hath no greater estate then he had before. But if my tenant for terme of life let the same land out to an other for terme of the lyfe of his Leslie, the remainder to an other in fee, now if I releas vnto him vnto whom my tenant letted for terme of life, I shalde vaer to for euer though that no mention be made of his heires, for this that at the time of the releas made I had no reuersion but onely a right to haue the reuersion: For by such a leas with a remainder ouer that my tenant made, in this case my reuersion is discontinued, & such a releas shall enure vnto him in the remainder to haue aduantage of this, as well as to the tenant for term of life, for to that intent the tenant for term of life, and he in the remainder be as one

tenant

tenant in the law, & be as if one tenāt were sole seised in his demesne as of fee at ye time of such releases made vnto him. Also if a man be disseised by two, if he release vnto one of thē, he shall hold his fellow out of the lād, & by such release shal sole haue possessiō & estate in the lād. But if one disseisor infeoffe two in fee, & the disseisee release to one of them, this shall inure to both the said feoffees. And the cause of the diuersitie between these two causes, is apparēt inough.

Also, if I be disseised, & the disseisor is disseised, if I release to the Disseisor of my disseisor, my Disseisor shall neuer haue Assise nor enter vpon his Disseisor, for this that his Disseisor hath my right by my release &c. And so it seemeth in this case, that if there were xx. disseisors ech after other, & I release to the last disseisor, he shall bar all the other of their actions & their title. And the cause is, as it seemeth, for this, ye in many cases whē a mā hath a lawful title to enter, though he enter not &c. he shal defeat all mean titles by his release &c. But this is not in euery case, as shalbe said afterward.

Also, if a man be disseised, the which hath a sonne within age, and dieth, & being the sonne within age, the disseisor dieth seised, & the land descendeth to the heire, and a straunger abateth, and after the sonne of the disseisee when he commeth vnto full age releaseth all his right &c. to the abatour: In this case the heire of the disseisor shall haue no Assise of Mortdauncester against the abator, but he shall be barred of the

Assise, for this that the abator hath the right of the son of the Disseisee by his release, & the entrie of the son was lawfull &c. for this that he was within age at the time of the deceit &c. But if a man be disseised, & the disseisor maketh a feoffement upon condition, that is to say, to yeeld unto him certaine rent, & for default of payment a entrie &c. if the disseisee releases to the feoffee upon condition, yet this amendeth not the estate of the feoffee upon condition, for notwithstanding such release, yet his estate is upon condition as it was before. In the same maner it is where a man is disseised of certain land, & the disseisor graunteth a rent charge out of the same land, though that after the disseisee releaseth unto the disseisor &c. yet the rent charge abideth in his power. And the cause is in these two cases, that a man shall have none advantage by such release that shall be against his owne proper acceptance, & against his owne grant. And though that some have said, that where the entry of a man is congeable upon a tenant, if he release to the same tenant, that this availeth upon the tenant & after intendeth him &c. this is not true in every case, for in the first case of these two cases, if the disseisee in the entry upon the feoffee upon condition, & after intendeth him then the condition is all put afore & void. And in the second case if the disseisee enter & intendeth him that granted the rent charge, there is the rent charge avoyded. But it is not avoyded

by

by any such release without entrie made &c.

Also, if a man be disseised by a child within age, ye which alieneth in fee, & the alienee dieth seised, & his heire entreth (being the disseisor within age) Now it is in ye election of the disseisor to haue a writ of Dū fuit infra ętatē, or a writ of Right against the heire of the alienee, & which writ soeuer he taketh of them, he ought to recouer by the Law. And also he may enter into the land without any recouerie, & in this case ye entry of the disseisee is takē away: but in this case if the disseisee releas his right to the heire of the alienee, and after the disseisor bringeth a writ of Right against the heire of the alienee, & he ioyneth the mise vpō the clerre right &c. the grand Assise ought by the law to find that the tenant hath more clerre right &c. thē hath the disseisor, for this that the tenant hath ye right of ye disseisee, by his releas, which is more auncient & more clerre right then the right of the disseisor, for by such release, all the right of the disseisee passeth vnto the tenant, & is in the tenant. And to this some haue sayd, that in such case where a man hath right to lands or tenements (but his entry is not lawfull) if he releas vnto the tenant &c. then such releas shall enure by way of extinguishment. And vnto this it may bee sayd, that this is truth vnto him that releaseth, for by his releas he hath dismissed himselfe cleane of his right as to his persō: But yet the right that he had may well passe and go vnto the tenant by his

releas, for it should be inconuenient ye such an anciēt right should be extinct all vtterly &c. for it is commonly said, ye right may not dye. But a releas that goeth by ye way of extinguishmēt against all persōs, is where he to whō the releas is made, may not haue this ye vnto him is released. As if there be lord & tenant, & the lord releaseth vnto ye tenāt al the right that he hath in the lordship, or all the right ye he hath in the Land &c. such a releas goeth by way of extinguishmēt against all persōs, for this that ye tenāt may not haue the same of himselfe. In the same maner as a releas made to ye tenāt of the land of a rent charge, or of a cōmon of pasture, for this that the tenāt may not haue that that vnto him is released &c. So such releases go away by extinguishment against all persons.

Also, to proue that ye grād assise ought to passe for the demādant in the case aforesaid, I haue heard often in the lecture vpō the stat. of West. the 2. that beginneth, In casu quādo vir amiserit per defaleam tenem'tū qd' fuit ius vxoris suæ &c. that at the cōmon law before that statute, if a leas were made to a tenāt for term of life, the remainder ouer in fee, & a strāger by a fayned action recouer against the tenāt for terme of life by default, & after the tenant dieth, he in the remainder hath no remedie before the statute, for this that he had no possession of the land, but if he in the remainder had entred vpon the tenāt for terme of life, and disseised him, and after the tenant entreth vpon him, & after

the

the tenant for term of life, dieth by such recouerie, had by default, and dieth: now he in the remainder may well haue a writ of Right against him that recouered, for this that ye mise shalbe ioined onely vpon ye cleere right. And yet in this case the seisin of him in the remainder was defeated by the entrie of the tenaunt for term of life. But peraduenture some will argue & say, that he shall haue no writ of right in this case, for this that whē the mise is wyned in such maner, that is to say, if the tenāt haue more cleere right to the land in the maner as it is holden, then the demaundant hath in the maner as he demādeth, And for this that the seisin of the demandant was defeated by the entry of the tenāt for term of life, then he hath no right in the maner as he demandeth. Unto this it may be said, that those wordes (Modo & forma prout &c.) in many cases be wordes of the maner of pleading, & no words of substance: For if a man bring a writ of Entre (in casu proviso) of alienation made by the tenant in Dower to his disinheritance, and pleadeth of the alienation made in fee, & the tenant saith that he aliened not in the manner as the demandant hath declared, and vpon this they be at issue, and it is found by verdict that the tenaunt aliened in the fayle, or for terme of an others lyfe, the demaundant shall recouer, and yet the alienatiō was not in the maner as the demandant hath declared.

Also, if there be Lord and Tenaunt, and the tenant

tenant holdeth of the lord by fealty only, & the lord distraineth the tenāt for rent, & the tenāt bringeth a writ of trespas against his L. for his cattel so takē, & the lord pleadeth that the tenāt holdeth of him by fealty & certain rēt, & for ye rent behind he came to distrain &c. & demādeth iudgemēt of the writ brought against him, Quare vi & armis &c. And the other saith that he holdeth not of him in the maner as he supposeth, & upon this they be now at issue, & it is fouid by verdict that he holdeth of him by fealty tantū. In this case the writ shal abate, and yet he held not of the lord in the maner as the lord hath sayd, for the matter of ye issue is, whether the tenāt holdeth of him or not: For if hee hold of him, though the Lord distraine for other serviees that he ought not haue, yet such a writ of trespas, Quare vi & armis &c. lyeth not against the Lord but shall abate.

Also, in a writ of trespas of beating, or of goods taken, if the defendant plead non culpable in the maner as the plaintife supposeth, & it is found that the defendant is culpable in another Towne, or at an other day then the plaintife supposeth, yet he shall recouer: And in many mo other cases these wordes, that is to say, in the maner as the demandant or the plaintife hath supposed, be no matter of substāce of the issue: for in a writ of right where the mise is ioyned upon the cleere right, it is as much to say, & to such effect, that is to wit, whether hath the more right, the tenaunt or the

the demandant to the thing so demanded &c.

Also, if a mā be disseised, & the disseisor dieth seised &c. and his son & heire is in by descent, & the disseisee entreth vpō the heire of the disseisor, the which entry is a disseisin &c. if the heire bring an assise, or a writ of Right against the Disseisee, he shall be barred: For this that when the graund assise is sworne, their oath is vpon the cleere right, and not vpon the possession &c. for if the heire of the Disseisor had brought an Assise of Nouel disseisin, or a writ of Entre in nature of assise, & recouered against the Disseisee, & sued execution, yet may the disseisee haue a writ of Entre in the Per against him of the disseisin made vnto him by his father, or he may haue against the heire a writ of Right: But if the heire ought to recouer against the disseisee in ye case aforesaid by a writ of right, then all his right shal be clerely gone for this ye a finall iudgement should be giuen against him, which should be against reason where the Disseisee hath more cleere right &c.

And know yee my son, ye in a writ of Right after this that the foure Knights be chosen in the graund Assise then there is no greater delay the in a writ of Formedon, after this that the parties be at issue &c. And if the myse be ioyned vpon battaile, then there is lesse delay.

Also, a release of all the right &c. in some case is good, made vnto him that is supposed tenant in the law, though he haue nothing in the tenements, as in a Præcipe quod reddat,

if

if the tenant alien the land hanging the writ, and after the demandant releaseth to him all his right, that release is good, for this that he is supposed to be tenant by the suit of the demandant, & yet he hath nothing in the land at the time of the release made. In the same maner it is, if in a Præcipe quod reddat the Tenant vouch, & the vouchee enter into the garranty, if after the demandant releaseth to the vouchee all his right &c. this is good enough, for this that the vouchee after this that he hath entred into the garranty, is tenant in law to the demandant.

Also, as to releases of actions reals, and actions personals, it is so, that some actions be mixt in the realtie and in the personaltie, as if an action of Wast be sued against the Tenant for terme of life, this Action is in the realtie, for this that the place wasted shall be recovered. And also it is in the personaltie, for this that the treble damages shall be recovered for the wrong & wast done by the tenant. So in this Action a release of actions reals is a good plea in barre, and so is a release of actions personals. In the same maner it is in Assise of Nouel disseisin, for this that it is mixt in the realty and in the personalty. But if such Assise be arraigned against the disseisor, the tenant of the Disseisor may plead a release of all actions personals for to barre the Assise, but not a release of actions reals, for none shall plead a release of actions reals in assise, but the tenants &c.

Also, in such Actions that ought to be sued against

against the tenant of the franketenement, if the tenant haue a release of all actions reals of the demaundaunt made vnto him before the writ purchased, & he pleadeth it, this is a good plee for the demaundaunt to say that he that pleadeth this plee had nothing in the frankетenement at the time of the release made, for that he had no cause to haue action reall against him.

Also, in such case where a man may enter in lands or tenements, & may also haue of this an action real which is giuen vnto him by the law against the tenant; if in this case the demaundant releaseth vnto the tenant all manner action reals, yet this taketh not away the entrie of the demaundaunt, but the demaundaunt may well enter, notwithstanding such release, for this that nothing is released but the action &c. In the same manner it is of things personels: As if a man wrongfully take my goods, if I release vnto him all actions personals, yet I may by the Law take my goods out of his possession.

Also, if I haue cause to haue a writ of Detinue of my goods against an other, though that I release vnto him all actions personals, yet I may take my goods out of his possession, for this that no right of goods is released to him but onely the action &c. Also, if a man be disseised, and the Disseisour maketh a Feoffement vnto diuers persons to his vse, and the Disseisour continually taketh the profites &c. and the disseisee releaseth vnto him all actions reals,

reals, and after he sueth against him a writ of Entre in nature of assise, because of the statute, for this that he taketh the profits: Inquire how the Tenaunt shall be holpen by the said releas, for if he shall pleade the releas generally, then the demaundant may say that he had nothing in the franktenement at the time of the releas made, and if he plead the releas specially, then it behoveth him to knowledge a disseisin, and then may the demandant enter in the land &c. by his constance of the disseisin &c. But peradventure by special pleading he may be barred of the action that he sueth &c. though that the demandant may enter &c.

Also if a man sue Appeall of Felony of the death of his ancestor against an other, though the appellant releas unto the defendant all manner actions reals and personals, this shall not helpe the defendant, for this that this appeal is not an action real, inasmuch that the appellant shall not recover any realty, nor such Appeal is no action personall, inasmuch that the wrong was unto his Ancestour and unto him; but if he releas to the defendant all manner of Actions, then it shall be a good barre in appeal. And so a man may see that a releas of all maner of actions, is better then a releas of actions reals and personals &c.

Also, in appeal of Robbery, if the defendant will plead a releas of the appellant of all actions personals, this formeth no plee, for an action of appeal where the appellant shall have

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iudgement of death &c. is more high then an action personall, and it is not properly said an action personall, and therefore if the defendant will make the releas of the appellant to barre him of the Appeall, it behoueth him to haue a releas of all manner of Appeales, or a Releas of all manner of actions, as it is meth &c. But in Appeal of Mayhem, a releas of all manner of actions personals is a good plea in barre, for this, that in such an action he shall recouer but damages.

Also, if a man be outlawed in an action personal by proces of the originall, & bring a writ of Error, if he at whose suit he was outlawed will plead against him a releas of actions personals, this serueth no plee, for by the said action he shall recouer nothing in the personalty, but all only to reuerse the outlawry. But a releas of a writ of Error shall be a good plee &c.

Also, if a man recouer debt or damage, & he releas to the defendant all manner of actions, yet he may lawfully sue execution by Capias ad satisfaciendū, or by Elegit, or by Fieri facias, for execution by such writs may not be sayd an Action, but if after a yeare and a day the plaintife will sue a Scire facias to haue execution &c. then it seemeth a releas of all actions shall bee a good plea in barre: But some haue thought the contrarie, insomuch that the writ of Scire facias is a writ of execution, and is to haue execution. But insomuch that vpon the same writ ye defendant may plead diuers matters

ters after the iudgement giuen to put him from execution, as vtlawry, & diuers other &c. therfore it may well be said actiō &c. and I proue ẏ in a Seire facias out of a fine, a releas of all maner of actiōs is a good plea or bar, but where a mā hath recouered det or damage, & it is accorded betweene them, that the plaintif shall not sue execution, then it behoueth ẏ the plaintife make a releas to him of all maner executiōs.

Also if a man releas to an other all maner demands, this is the most best releas that he to whom the releas is made can haue, & most shall enure to his aduātage, for by such releas of all maner of demands, all maner of actions reals & personals, and actions of appeales be gone and extinct, and all maner of executions be gone & extinct: and if a man hath title to enter in any lands or tenements, by such releas his title is gone. And if a man haue rent seruice, or rent charge, or common of pasture &c. by such releas of all maner demands to the tenant of the land, whereof the seruice, or the rent is going out, or to what land soeuer the common be, the seruice and rent, and the common is gone and extinct &c.

Also, if a man releas to another all maner quarrels, or all controuersies or debates betweene them, Inquire to what matter, and to what effect such words doe extend.

Also if a man be bound by his deed to another in a certain summe of mony to pay at the feast of S. Mich. then next following &c. if the

obligee

obligæ before the said feast releas to the obligor all actions, he shall be barred of the duetie for euer, & yet he might haue no action at the time of the releas made. But if a mā let land to another for terme of yeares, to yeld at the feast of S. Mich. next insuing xl.s. & before the same feast he releaseth to the lessee all actions, yet after the same feast he shall haue an action of debt for the non payment of the xl. s. notwithstanding the layd Releas. Studie the cause of the diuersitie betweene these 2. cases.

Also, where a man will sue a writ of right, it behoueth ỹ he plead of the seisin of himselfe or of his Auncestors, & also ỹ the seisin was in time of the same king, as he pleadeth in his plee, for this is an auncient law vsed, as it appeareth by report of a certaine plee, in such forme as insueth. Sir J. Barrey brought a writ of right against Reinold Ashington, & demaunded certain tenements &c. the mise was ioined in the bankes, & the originall & the proces were sent before Iust. errants, where the parties came, & the iij. knights were sworne, without challenge of the parties to be allowed, for this ỹ the election was made by assent of the parties, with the 4. Knights, & the oath was such. That I shall say truth &c. whether R. of A. haue more right to hold the tenements that J. Barrey demanded against him by his writ of right, or John to haue the tenemēts as he demandeth, & for nothing to let to say the trueth, as God me helpe &c. without saying to their

knowledge, & such oth shalbe made in attaint, and in battaile, & in waging of Law, for those do bring euery thing vnto an end: But J. B. pleaded of ye disseisin of one Rafe his ancester in the time of K. H. & Rainold vpō ye mise ioyned tendred halfe a mark for the time &c. & vpon this Herle Iustice said to the grād assise, after ye they were charged vpon the cleere right: Goodmen, Rainold gaue halfe a marke to the king for that time, to the intent that if yee find ye the auncester of J. was not seised in the time that the demandant hath pleaded, you shall inquire no further vpō the right, and for this ye shal say to vs whether the ancester of J. Rafe by name, was seised in the time of king Henry as he hath pleaded or not: & if yee find that he was not seised in the time, ye shall inquire no more, & if ye find ye he was seised, then inquire farther of the right: and after the grand assise came with theis verdict & said that Rafe was not seised in the time of king Henry, wherby it was awarded that Rainold should hold the tenements against him demaunded to him and to his heires quite of J. Barrey & his heires, to the remnant, and John in the mercy.

Confirmation.

A Deed of confirmation is most commonly in such forme, or to such effect. Nouerint vniuersi &c. me A. de B. ratificasse, approbas. & confirmas. C. de D. statū & possessionē quos habeo, de, & in vno messuag. cū pertin' in N. &c. And in some case a deed of confirmatiō is good & vail

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able, where, in the same case, a deed of releas is not good nor vailable. As I let land to a man for term of his life, the which letteth the same land to an other for xl. yeares, by force of the which he is possessed, if I by my deed confirm the state of the tenant for terme of yeres, & the tenant for terme of life dieth during the term of yeres, I may not enter in the Land during ỹ same term, yet if I by my deed of releas, have released to the tenant for terme of yeres in the life of the tenãt for term of life, the releas shal be void, for this, that then no priuity was betweẽ me & the tenant for terme of yeres, for a releas is not auaileable to the tenant for term of yeres, but where a priuity is betweẽ him & him that releaseth. In the same manner it is if I be disseised, & ỹ disseisor maketh a leas to another for terme of yeres, if I releas vnto the termor, ỹ is void: but if I cõfirm the estate of the termor, that is good & effectuall. Also, if I be disseised, & I confirme the state of the disseisor, thẽ he hath a good & rightful estate in fee simple, though that in the deed of confirmation no mention is made of his heires, for this that he had fee simple at ỹ time of the confirmatiõ: for in such case if the disseisee confirm the state of ỹ disseisor, to haue & to hold to him for term of his life, yet the disseisor hath fee simple, & is seised in his demeasnes of fee, for this that whẽ his estate was cõfirmed, he hath fee simple, & in such deed he may not chãge his estate without entry vpõ him &c. In ỹ same maner it is, if the

eſtate be cõfirmed for term of a day, or for term of an houre, he hath a good eſtate in fee ſimple, for this, that his eſtate in fee ſimple was once cõfirmed, for cõfirmare, idé eſt qd firmũ facere.

Also, if 2. be diſſeiſors, & the diſſeiſee releaſeth to the one, hee ſhall hold his fellow out of the land: But if the diſſeiſee confirme the eſtate of one without more ſpeech in the deed, ſome ſay that he ſhal not hold his fellow out, but he ſhal hold iointly with him, for this, ỹ nothing was confirmed but his eſtate that was ioint: & for this ſome haue ſaid, that if 2. iointenants be, & the one confirmeth the eſtate of the other, that he hath but a ioint eſtate as he had before. But if he haue ſuch words in the deed of cõfirmation, to haue & to hold to him & to his heires all the tenemẽts whereof mention is made in the confirmation then he hath eſtate ſole in the tenemẽts, & therfore it is a good & a ſure thing in euery cõfirmatiõ, to haue theſe words, to haue & to hold the tenements &c. in fee, or in fee taile, or for terme of life, or for terme of yeares after or as the cauſe or matter is: for to thintent of ſome, if a man let land to another for terme of life, and after he confirmeth his eſtate by theſe words, to haue & to hold his eſtate to him & to his heires, this confirmation as concerning his heires is void, for his heires cannot haue his eſtate which was but for terme of life, but if he cõfirme his eſtate by theſe words, to haue the ſame land to him & to his heires, this confirmatiõ maketh fee ſimple in this caſe to him

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in the land, for this, that these words, to haue & to hold &c. goeth to the land, & not to the estate that he hath &c. Also if I let certain land to a woman sole for terme of her life, the which taketh a husbād, & after I confirme the estate to the husband & to the wife for term of their two liues, in this case ꝑ husbād holdeth not iointly with the wife, but holdeth in the right of his wife for term of his life: but this cōfirmation shal enure to the husbād by way of remainder for term of his life, if he suruiue his wife. But if I let lād to a womā sole for terme of yeres, which taketh a husband, & after I cōfirme the estate to the husband & the wife, for terme of both their liues, in this case they haue ioynt estate in the frankstenemēt of the land, for this that the wife had no frankstenement before.

Also, if a Parson of a church charge the glebe of his Church by his deed, & the Patron & the Ordinary confirme the same grāt, & all this is cōprised within the same grant, ꝑ same grant shall be in his strength after the purpose of the same graunt: but in such case it behoueth that the patron haue fee simple in the aduowsō, for if he haue estate in ꝑ aduowson for term of life, or in taile, thē the grant shall stand but during his life, & the life of the parson ꝑ granted it &c.

Also, if a man let land for term of life, which tenant for term of life charg eth the land with a rent in fee, and he in the reuersiō confirmeth the same graunt, this charge is good inough & effectual. And if there be a perpetual Chātry,

wherof the Ordinary hath nothing to meddle nor to do, the patron of the chātry, & the chaplain of the same chātry may charge the chātry with a rent charge in perpetuity. Also in some case these verbes Dedi & cōcessi, haue the same effect in substāce, & shal enure to the same intēt as this verb cōfirmaui: as if I be disseised of a plough land, & after I make such a deed &c. Sciant prȩsētes &c. qd' dedi to the disseisor the said plough land &c. And if I deliuer only the deed to him without liuery of seisin of the land, that is a good cōfirmatiō, & as strong in the law, as if he had in the deed this verb Confirmaui &c.

534 Also, if I let lād to a mā for term of yeres, by force of which heis possessed, & after I make him a deed &c. Qd' dedi, vel cōcessi &c. the same land, to haue for terme of his life, & deliuer him the deed, then by & by he hath estate in the land for term of his life, & if I say in ẏ deed, to haue to him & to his heires of his body ingendred, he hath estate in the taile, & if I say in the deed, to haue & to hold to him & to his heires, he hath estate in fee simple, for this shal enure to him by force of cōfirmation to inlarge his estate. Also if a man be disseised, & the disseisor dieth seised, & his heire in by discent, after the disseisee & the heir of ẏ disseisor make iointly a deed to another in fee, & liuery of seisin vpō this is made, as to the heire of the disseisor that insealeth the deed, the tenemēts passe by the same deed by way of feffemēt, & as to ẏ disseisee ẏ insealeth the same deed, this shall not enure but by ẏ way of confirma-

firmatiõ: But if the disseisee in this case bring a writ of Entrie in the (Per & Cui) against the alienee of the heire of the disseisor, inquire how he shall plead the deed against the demandant by way of cõfirmation &c. And know this my child, that it is one of the most honorable, laudable, & profitable things in our Law, to haue the science of well pleading, in actions reals & personals, and for this I counsaile thee, especially to set thy courage & care to learne that.

Also, if there be lord and tenant, & the Lord confirmeth the estate that the Tenant hath in the tenements, yet the seigniory wholy abideth to the Lord as it was before. In the same manner it is if a mã haue a rent charge out of certaine land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same maner it is if a man haue cõmon of pasture in the land of any other, if hee confirme the state of the tenant of the land, nothing shal depart from him of his common, but this notwithstanding the common abideth to him as it was before. 535 536 537

But if there be Lord & tenant, which holdeth of his Lord by seruice of fealty, & xx. s. of rent, if the lord by his deed confirme the estate of the tenant to hold by xij. d. j. d. or by an ob. in this case the Tenaunt is discharged of all other seruices, and shall yeeld nothing to the Lord, but that that is comprised within the same confirmation, yet if the Lord will by the deed of confirmation, that the tenant in this 538

case ought to yeld to him a Hauke, or a Rose yearely at such a feast &c. this reseruation is voyd, for this that he reserueth to him a new thing that neuer was parcell of the seruices before the confirmation, and so the Lord may abridge the seruices by such confirmation, but he may not reserue to him a new seruice &c.

Also, if there be Lord, Meine, & tenant, & the tenant is an Abbot that holdeth of the meine by certaine seruices yearely, the which hath no cause to haue acquitãce against his meine for to bring a writ of Meine &c. in this case if the meine confirme the estate that the Abbot hath in the land, to haue and to hold the Land vnto him & his successors in frankalmoigne, or free almes &c. in this case this cõfirmatiõ is good, & then the Abbot holdeth of the meine in frankalmoigne: & the cause is for this, for no new seruice is reserued, for all the seruices specially specified be erased, & nothing is reserued to the meine, but the Abbot shall hold the land of him as it was before the confirmation, for he that holdeth in frãkalmoign ought to do no bodily seruice, so that by such cõfirmatiõ it appeareth that the meine shal not reserue vnto him no new seruice, but that the lands shalbe holden of him as it was before, & in this case the Abbot shal haue a writ of Meine, if he be distrained in his default, by force of the said cõfirmation, where percase he might not haue such a writ before &c.

Also if I be seised of a villein, as of a villein in grosse, & an other taketh him out of my pos-

session

ſeſſion claiming him to be his villein, whereas he hath no right to haue him as his villeine, & after I confirme the eſtate to him that he hath in my villeine, this confirmation ſeemeth void, for this, that none may haue poſſeſſiō of a man as of a villeine in groſſe, but he which hath right to haue him as his villeine in groſſe, and inſomuch that he to whom the confirmation was made, was not ſeiſed of him as of his villeine at the time of his confirmation, ſuch confirmatiō is void: but in this caſe if ſuch words where in the deed, Sciatis me dediſſe & confirmaſſe tali &c. talem villanum meum, this is good, but this ſhall enure by force and way of graunt, and not by way of confirmation &c.

Alſo ſometimes theſe verbes (Dedi & conceſſi) enure by way of extinguiſhment of the thing giuen or granted. As a tenāt holdeth of his lord by certaine rent, & the lord by his deed granteth to the tenāt & to his heires ꝙ rent &c. this ſhall enure to the tenant by way of extinguiſhmēt, for by this grant the rent is extinct. In the ſame maner it is, where one hath a rēt charge of certain land, & he granteth to the tenant of the land the rent charge, and the cauſe is for this, that it appeareth by the words of the grant, that the will of the donor is, that the tenant ſhall haue the rent &c. inſomuch that he may haue no rent out of his own lād, for this, the deed ſhalbe vnderſtood & taken for the moſt aduauntage & auaile of the tenant that it may be taken, & that is by way of extinguiſhment.

Alſo

Also, if I let land to a man for term of yeres, and after I confirme his estate without moe wordes put in ꝑ deed, he hath no greater estate but for terme of yeres, as he had before: But if I release to him my right that I have in the land without moe wordes put in ꝑ deed, he hath estate of frankstenement. And so mayst thou my child understand great diuersities betweene releases & confirmations. And if I be within age, & let land to one for term of xx. yeres, and he graunteth the land for term of x. yeares, so that he graunteth but parcell of the terme: In this case when I am of full age, if I release vnto the graunte of the lesse &c. this release is voyd, for this, that there is no priuitie betweene him & me. But if I confirme his estate, then this Confirmation is good: But if my lesse graunt all his estate to an other, then my releas made to the grantee is good & effectuall.

Also, if a man grant a rent charge out of his land to an other for terme of his life, & after he confirmeth his estate in ꝑ same rent, to have & to hold to him in fee taile, or in fee simple, this confirmation is void, as to the inlarging of his estate, for this, that he that confirmeth had no reuersion in the rent: But if a man be seised in fee of rent seruice, or of rent charge, & he granteth the rent to an other for terme of life, & the tenant attorneth, & after he confirmeth ꝑ estate of the grantee in fee taile, or in fee simple, this confirmation is good as to inlarge his estate after the wordes of the deed of confirmation, for this

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that he that confirmed the eſtate at the time of the confirmation had the reuerſion of the rent &c. But in this caſe aforeſaid, where a man granteth a rent charge to another for terme of life, if he will that the grantée ſhall haue eſtate in the tail, or in fée, him behoueth that the deed of the graunt of the rent charge for terme of life, be ſurrendred or cancelled, & then to make it a new deed of ſuch a rent charge, to haue & to take to the grauntée in the tayle, or in fee, Ex paucis dictis intendere plurima poſſis.

¶ Attournement.

A Ttornement is, if there be Lord and Tenant, and the Lord will graunt by his deed the ſeruice of his tenant to an other for terme of yeres, or for term of life, or in taile, for in fée, it behoueth that the tenant attourn to the grãtée in the life of the grantor by force & vertue of the grant, or otherwiſe the grant is void. And attournment is none other thing in effect, but when the tenant hath heard of the grant made by his Lord, that the ſame tenant by word agrée to the ſaid grant, as to ſay to the grantée, I agrée me to the grant made to you, or I am well content of the grant made to you &c. But the more common attournement is to ſay, Sir, I attourne to you by force of the ſame grant, or I become your tenaunt &c. or to deliuer vnto the grãtée j. d. ob. or farthing, by way of attournement &c. 551

Alſo, if a man be ſeiſed of a manour, which manor is parcel in demeſn, & parcel in ſeruice,

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if he will alien such a manor to an orher, it behoueth that by force of the alienation al the tenants ỹ hold of the alienor (as of this manor &c.) attourne to the Alienée, or otherwise the seruices abide cõtinually in the alienor, except tenãts at will, for it nedeth not that tenãts at will attorne vpõ such alienatiõ &c. for this that the same lands or tenemẽts ỹ they hold at will do passe to ỹ alienée by force of such alienation.

Also, if there be lord and tenant, and the tenant letteth the tenements to a man for terme of lyfe, the remainder to another in Fée, if the Lord grant the seruices to the tenant for term of life in fée, in this case the tenant for term of life hath fée in the seruices, but the seruices be put in suspence during his life, but his heires shall haue the seruices after his death, and in that case it nedeth not attournement, for by the acceptance of the deed of him that ought to attourne, this is attournement in it selfe &c. But where the tenant hath as great and high estate in the tenements as the Lord hath in the seignorie, in such case if the Lord graunt the seruice vnto the tenant in fée, this enureth by way of extinguishment, Causa patet.

Also, if there be Lord & tenant, & the tenant maketh a leas to one for term of life, sauing the reuersion vnto him, if the Lord grant the seignorie to the tenãt for term of life in fée, in this case it behoueth that he in the reuersiõ attorne to the tenãt for term of life by force of ỹ grãt, or otherwise the grant is void, for this that he

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in the reuerſion is Tenant to the Lord.

Alſo, if there be Lord and tenant, and the tenant holdeth of the Lord by twentie maner of ſeruices, and the Lord graunteth his ſeignorie to an other, if the tenant pay or do any of the ſeruices to the grauntée, this is a good attournement, of and for the ſeruices, though that the tenants intent was to attourne but of the ſame parcell, for this that the Seignorie is an whole thing, though that there bee diuers manner of ſeruices that the Tenaunt ought to doe.

Alſo, if there be Lord and tenant, and the tenant holdeth of the Lord by many maner of ſeruices, and the Lord graunteth the ſeruices to an other by fine, if the grauntée ſue a Scire facias out of the ſame fine, for any parcel of the ſeruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the ſeruices.

Alſo, if the Lord of the rent graunteth the ſeruices vnto an other, and the tenant attourneth by a penie, and after the grauntée diſtraineth for rent behind, and the Tenaunt to him maketh reſcous: In this caſe the grauntée ſhall haue no Aſſiſe of the rent, but he ſhall haue a Writ of Reſcous, for that the gift of the peny was but by way of attournement. But if the tenant had giuen vnto the grauntée the ſayd peny as parcell of the rent, or a halfe penie, or a farthing, by way of ſeiſin of the rent, then this is a good attournement, and alſo it

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is good a seisin to the grantée of the rent, and then vpon such reseous the grantee shall haue an Assise &c.

567 Also, if a man let Tenements for terme of yeres, by force of which the lessee is seised, and after the Lord graunteth by his déede the reuersion to another for terme of life, or in taile, or in fee, it behoueth him in this case that the tenant for terme of yeares attourne, or otherwise nothing passeth to such grauntée by such déed. And if in this case the tenant for terme of yeres attourne to the grauntée, then by and by passeth the franktenement to the grauntée by such attournement, without any liuerie of seisin &c. for this, if any liuerie shall be made, or néedeth to be made in such case, then the tenant for terme of yéeres shall be at the time of the liuery of seisin out of his possession, which should be against reason.

568 Also, if Land bée let to a man for terme of yeres, the remainder to an other for terme of life, reseruing to the lessor a certain rent by the yéere, and liuery of seisin is made vpon this to the tenant for term of yeres, if he in the reuersion in such case grant his reuersiō to another &c. and the tenant that is in the remainder after the term of yeres attourneth, this is a good attournement, and he to whom the reuersion is granted, by force of such attournement shal distraine the tenant for terme of yeres for the rent due after such attournement, though the tenant for term of yeres neuer attourned vnto him,

him, and the cause is for that where the reuer-
sion is dependant vpon the state of franktene-
ment, it sufficeth that the tenant of the frank-
tenement attorne vpon such graunt of reuer-
sion &c. And it is to wit, that where a lease for
terme of yeeres, or for terme of life, or a gift in
the taile is made to any man, reseruing to such
a lessor or donor certain rent, if such a lessor or
donor grant his reuersion to another, and the
tenant of the Land attorne, the rent passeth to
the grantee, though in the deed of the graunt of
reuersion, no mention is made of the rent, for
this that the rent is incident to the reuersion
in such case, & not conuerso, for if a man will
graunt the rent in such case vnto an other, re-
seruing to him the reuersiō of the land, though
the tenant attorne to the grantee, this shall be
but a rent secke &c.

Also, if a man let land to an other for terme
of life, & after such lease he confirmeth by a deed
the estate of the tenant for terme of life, the re-
mainder to another in fee, and the tenaunt for
terme of life accepteth the deed, then is the re-
mainder indeed to him to whō the remainder
was giuen or limited in the same deed, for by
the acceptance of the tenant for terme of life of
the same deed, this is a grāt of him, & so an at-
tournement in law: But yet he in the remain-
der shal haue none action of waste, nor other be-
nefit by such remainder, but if hee haue ȳ same
deed in his hād by which the remainder was
graunted vnto him, & for this that in such case

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the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder shall not haue an action of Wast against him, for this that he may not come to haue the possession of the deed &c. It shall be good in such case for him in the remainder, that a deed indented be made by him y will make the confirmation, and the remainder ouer &c. And he that maketh such confirmation deliuere a part of the Indenture to the Tenant for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the Indenture, may haue an action of Wast against the tenant for terme of lyfe, & also other aduantage, that he in the remainder may haue in such case.

Also, if two Iointenants be, which let land to an other for terme of lyfe, yeelding to them and their heires a certaine rent by yeare: In this case if one of the two Iointenants in the Reuersion release to the other Iointenaunt in the same reuersion, this release is good, and he to whom the release is made, shall haue only the rent of the tenaunt for terme of life, and shall haue a writ of Wast against him, though he neuer attorned by force of such release. And the cause is, for the priuitie that once was betweene the tenant for term of life, and them in the Reuersion.

In the same manner, and for the same cause it is where a man letteth Land to an other for terme of hi lyfe, the remainder to another

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for terme of his life, reseruing the reuersion to the lessor, in this case if he in the reuersion release to him in the remainder &c. & to his heirs all his right &c. then he in the remainder hath a fee &c. and shall haue a writ of waste against the Tenant for terme of life without any attournement of him &c.

Also, if a lease be made for terme of life, the remainder vnto an other in the tayle, the remainder ouer to the right heires of the tenant for terme of life, in this case if the tenant for terme of life graunt his remainder in fee to an other by his deed, the remainder by and by passeth by his deed without any other attornmēt. For if any ought to attourne in this case, it should be ỹ temāt for terme of life. And it were in vaine ỹ he attorne vpon his owne grant &c.

Also, if there be Lord & tenant, and the tenant holdeth of the Lord by certaine rent and knights seruices, if the Lord graunt the seruices of the tenant by fine, the seruices be by and by in the graunter by force of the fine, but yet the Lord may not distraine for any parcel of cis seruices without attornement. But if the tenant dy, his heires being withinage, the lord shall haue the ward of the bodie of the heire & of the land &c. howbeit that he neuer attorned: for this that the seigniory was in the grantee maintenant by force of the fine.

And also in such case if the tenant die without heire, the Lord shall haue the tenancie by way of Eschеat. In the same maner it is if a

man grant the reuersion of his tenāt for terme of life to another by fine, the reuersion passeth presently to the graunte by force of the fine, but the grantee shall neuer haue action of waste without attornement &c. But yet if the tenant for terme of life alien in fee, the graunte may enter &c. for this that the reuersiō was in him by force of the fine, & such alienation was to his disinheritance. But in this case where the Lord graunteth the seruices of his tenant by fine, if the tenāt die, his heire being of ful age, the grantee by the fine shal not haue the reliefe, nor neuer shall distraine for the reliefe, except there had been some attornement of the tenant that dyed &c. for of such things that lye in distresse, vpon the which a writ of Replegiare is sued &c. a man ought to auow the taking good and righteous &c. and there ought to bee attournement of the tenant, howbeit that the grant of such seruices be by fine. But to haue ward of lands & tenements so holden during the nonage of the heire, or them to haue by way of Escheat, there needeth not any distresse &c. but an entrie in the Land by force of the right of the seigniory that the grantee hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities beene deuisable by testament by the customs and the vse &c. if in such Borough or Citie a man be seised of rent seruice, or of rent charge, and he deuiseth such rent or seruice to ano-

an other by his testament & dieth &c. In this case he to whom the deuise is made may distrain for the rent or the services behind, howbeit that the tenant neuer attourned. In the same maner it is, where a man letteth such tenements deuisable to another for terme of life, or for terme of yeares, & deuiseth the reuersion by his testamēt to another in fee, or in fee taile, and dyeth, and anon after that the tenant maketh wast, he to whom the deuise was made shall haue a writ of wast, howbeit that the tenant neuer attourned: and the cause is for this, that the will of the deuisor made by the testament, shall be performed after the intent of the deuisor, & if the effect of this should be vpon the attourning of the tenaunt &c. then percase the tenant would neuer attourne, and thē the will of the deuisor should neuer be performed, and therefore the deuisee shall distrain, or haue an action of wast without attournement. For if a man deuise such tenements to another by his testament (habend' sibi imperpetuum) and dieth, and the deuisee entreth, he hath a fee simple, Causa qua supra, and yet if a deed of feoffement were made to him by the deuisor of the same tenements (habendum & tenendū sibi imperpet') and liuerie and seisin were thereupon made, he shal haue none estate but for terme of life &c.

Also, if a man be seised of a Mānour which is parcell in demeine, and parcell in seruices, and thereof bee disseised, but the tenant

which holdeth of the manor, neuer attourneth to the disseisor: in this case, howbeit that the disseisor die &c. and his heire is in by descent, yet may the disseisee distrain for the rent being behind, & haue the seruice: But if the tenants come to the disseisor, & say: we become your tenants &c. or otherwise make attournement to him &c. and after the disseisor dyeth seised &c. then the disseisee may not distrain for the rent, for this by all the manor descended to the heire of the disseisor. But if one hold of me by rent seruice, which is a seruice in grosse, & another that no right hath, claimeth the rent & receiueth and taketh the same rent of my tenant by cohersion of distresse, or by other forme, and so disseiseth me by taking such rēt, howbeit that such a disseisor die seised by such taking of the rent, yet after his death I may well distraine for the same rent being behind before the death of the disseisor, and also after his death: & the cause is this, that such is not by disseisor, but by election at my will; for howbeit that he tooke the rent of my tenant, I may at all times distrain my tenant for the rent behind &c. so it is to me, but as if I will suffer the tenāt to be by so much time behind of payment to me of the same rent: for the paiment of my tenant to an other to whom he ought not to pay, is no disseisin to me, nor shall not put me out of my rent, without my will & election, for howbeit that I may haue Assise against such a taker &c. yet this is at my election if I will take him as my

disseisor

diſſeiſor or not, ſo that ſuch diſcēts of rents in groſſe ne putteth not out the lords from their diſtreſſe, but that at each time they may well diſtraine for the rent behind: And in this caſe if after the deceaſe of him that ſo wrongfully toke the rent, I graunt by my deed the ſeruices to another, and the tenant attourneth, this is good ynough, & the ſeruices by ſuch graunt & attournement, incontinent be in the grantee &c. But otherwiſe it is where the rent is parcell of the manour, and the diſſeiſor dieth ſeiſed of the whole manor, as in the caſe before ſayd.

Diſcontinuance.

DIſcontinuance is an auncient word in the law, and hath diuers ſignifications &c. but as to one intent it hath ſuch a ſignification, that is to ſay, where a man hath aliened to an other certain Lands or tenements and dieth, and another hath right to haue the ſame lands or tenements, but he ne may enter in them, becauſe of ſuch alienation &c. As if an Abbot be ſeiſed of certaine lands & tenements in fee, and he alieneth the ſame lands & tenements to an other in fee, or in taile, or for term of life, & the Abbot dieth, his ſucceſſor may not enter in the ſame lands and tenements, howbe it that he haue right to haue them as in the right of the houſe, but he is put to his action to recouer the ſame Lands or tenements which is called a writ de Ingreſſu ſine aſſenſu Capituli.

And if a man be seised of lād as in the right of his wife &c. and thereof infeoffeth an other &c. and dieth, the wife may not enter, but she is put vnto her action, the which is called Cui in via. See Stat. 32. H. 8. c. 28. Leases.

Also, if tenaunt in the taile of certaine land thereof infeoffe another &c. and hath issue and dyeth &c. his issue may not enter in the land, howbeit that hee hath right and title to that, but that he is put to his action, that is called a Formedon in the discender.

Also, if there be tenant in tayle, and the reuersion is to the donour and to his heires, if the tenant make a feoffement &c. & dieth without issue, he in the reuersion may not enter, but is put to his action of Formedon in the reuerter. And in ꝯ same maner it is where there is tenant in ꝯ taile of certaine land where the remainder is to an other in the tayle, or to an other in fee, if the tenant in the taile alieneth in fee, or in fee taile &c. and after dieth without issue, they in the remainder may not enter, but bee put to their writ of Formedon in the remainder &c. and for this that by force of such feoffement and such alienations in the cases aforesayd, and in like cases those which haue title and right after the death of such a feoffor or Alienor, may not enter, but be put to their actions vt supra, therefore such feoffements and alienations be called discontinuances.

598 Also, if a tenant in the taile be disseised, & he releaseth by his deed to the disseisour, & to his heires

heires all the right ꝙ he hath in the same land, this is no discontinuance, for this that nothing of right passeth to the disseisor but for terme of life of the tenant in the taile that made the release &c. But by the feoffement of tenant in the taile a fee simple passeth by the same feffement by force of liuery of seisin &c. but by force of a release, nothing passeth but the right ꝙ he may lawfully & rightfully releale without hurt or damage to other persons which thereto haue right after his decease &c. & so it is a great diuersitie betwen a feffemēt of the tenant in the taile, & a releas of the tenant in the taile. But it is said, that if tenant in the taile in this case releale to the disseisor, and bindeth him & his heires to warrantize &c. and dieth, & this warranty discendeth to his issue, then that is a discontinuance because of warrantize &c. But if a man haue issue a son by one wife which dyeth, and after he taketh another wife, & ꝙ tenements be giuen to him & his second wife, and to the heires of their two bodies ingendred, & they haue issue another sonne, then the second wife dyeth, and after the tenant in the taile is disseised, and he releaseth to his disseisor al his right &c. and bindeth him and his heires vnto warrantize, and dieth, this is no discontinuance to the issue in the taile by the second wife, but hes may well enter &c. for this that the warrantize discended to his elder brother that his father had by his first wife.

In the same maner where the tenements be

discēdable to ye yonger son after the custome of borough English, which be intailed &c. & the tenāt in ye taile hath issue 2. sons & is disseised, & he releaseth to his disseisor all his right with warrāty & dieth, the yonger son may enter vpon ye disseisor notwithstāding the warrantize, for this that the warrantize descendeth to the elder son, for alway the warrantize descēdeth &c. to him that is heire by the common Lawe.

Also, if an Abbot be disseised, & he releaseth to the Disseisor with warrantize, this is no discontinuance to his successor, for this that nothing passeth by this release but the right that he hath during the time that he is abbot, and this warrantize is expired by his priuation or by his death.

Also, if tenant in the tail be seised of certain land, and he letteth the same land for terme of yeares, by force of which lease the lessee is in possession, in which possession the tenant in ye taile by his deed releaseth all his right that he hath in the same land to the Lessee and to his heires for euer, this is no discontinuance, but after the decease of the tenant in the taile, his issue may well enter, for this that by such releas nothing passeth but for term of life of the tenant in the taile. In the same maner if the Tenant in the tayle confirme the state of the lessee for term of certain yeres to haue and to hold to him and to his heires, that is no discontinuance, for this that nothing passeth by such confirmation, but the estate that the tenant

nant in the tayle had for terme of his life.

Also, if a tenant in the taile by his deed grāt to another al his estate that he hath in the tenements entailed to him, to haue & to hold all his estate to the other & to his heirs for euer, & deliuereth seisin accordingly. In this case the tenant to whō the alienation was made, hath none other estate but for terme of life of ỹ tenant in taile, & so it may wel be proued ỹ the tenant in the taile may not graunt ne alien ne make any rightful estate of the franktenemēt to another person but for term of his own life &c. For if I giue certain land in the tayle to a man, sauing a reuersion to me, & after the tenant in the taile enfeoffeth another in fee, the feoffee hath no right estate in ỹ tenements, for ij. causes. One is for that that by such feoffement my reuersiō is discontinued, which is a wrong act & not a rightful act. Another cause is, if the tenant die, & his issue sueth a writ of Formedon against the feffee, the writ shall say & also the declaration, that the feoffee wrongfully him disseised, therefore if wrongfully he him disseised he had no right estate.

Also, if land be let to a man for term of his life, the remainder to another in the tail, if he in the remainder wil grant his remainder to another in fee by his deed, and the Tenant for terme of life attorneth, this is no discontinuance of the remainder.

Also, if a man be tenāt in the tail of auowson in grosse, or of cōmō in grosse, if he by his

deed

deed will grant the aduowson of the common to another in fee, this is no discontinuance, for in such case the grantee hath no estate but for term of life of the tenant in the taile that made this grant &c. Note well that such things as passe by way of grant made by deed, made in the countrey &c. such grant maketh no discontinuance as in the case aforesayd, & other like cases &c. And howbeit that such be granted in fee, by fine leuied in the kings court &c. yet they make no discontinuance &c.

Also, if a man be seised in the taile of lands deuisable by testament &c. and he demiseth it to another in fee, and dieth, and the other entreth, this is no discontinuance, for thus that no discontinuance was made in the lyfe of the tenant in the tayle &c.

Also, if an Abbot haue a reuersion, or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, and the tenant attorneth &c. this is no discontinuance. In the same manner it is where an abbot is seised of an aduowson, or of such things that passe by way of grant without Liuerie of seisin &c.

Also, if there be graundfather tenaunt in the tayle, father and sonne, and the graundfather is disseised by the father, and the father maketh a feoffement in fee without warrantize and dyeth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee, for this that this was no discontinuance, in so

so much that ꝑ father was not seised by force of the tayle at the time of the feoffement &c. but was seised in fee by disseisin made to the Grand father.

Also, if a woman inheritrix haue an Husband within age, which maketh a feoffement of the tenements of the wife and dieth, it hath bene questioned if the wife may enter or not. And it seemeth to some men that the entrie of the wife after the death of her husband shalbe lawfull in this case, for whē her husbād made such a feoffement &c. he might well enter notwithstanding such feoffement during the couerture, and hee might not enter in his owne right, but in the right of his wife &c. Ergo such right that he had to enter in the right of his wife &c. that right of entry abideth to the wife &c. after his decease. And it hath bin said, that if two Iointenants being within age, make a feoffement in fee, and one of the children dieth, and the other suruiueth, insomuch that both children might enter iointly in their lines, this right of entrie groweth all to him that suruiueth, and so he may enter into the whole &c.

Also, the heire of the husband that made the feoffement within age may not enter, for this that no right discendeth to such an heire in the case aforesaid, for this that the husbād had neuer any thing but in the right of the wife. And also when a child maketh a feoffement being within age, this shall neuer grieue nor hurt him, but that he may well enter &c. & this should

be

be against reason, that such a feoffement made by him that was not able to make such a feoffement shall grieue or hurt other, to tolle other of their entries &c. And for these causes it seemeth to some, that after the death of such an husband so being within age at the time of the feoffement &c, that his wife may wel enter &c.

Also, if a woman inheritrix taketh an husband and hath issue a sonne, and the husband dyeth, and she taketh another husband, and the second husband letteth the land that he hath in the right of his wife to another for term of his life, and after the wife dieth, and after the tenant for term of life surrendreth his estate to the second husbād &c. Inquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenāt for terme of life. But it is cleare lawe in this case, that after the death of the tenant for term of life, the son of the wife may well enter, for this that the discontinuance that was made all only for terme of life is determined by the death of the same tenant for terme of life &c.

Also, if the parson or vicar of a church alien certain lands or tenemēts parcel of his glebe &c. to another in fee and dieth, or resigneth &c. his successor may wel enter, notwithstanding such alienation, as it is layd in a Note Anno 2. H. 4. Termino Mich. quæ sic incipit, Nota quod dictum fuit pro lege, In a writ of Accompt brought by the Master of a Colledge, that if a parson or a vicar grant certain land

that

that is of the right of his church to another, & dyeth, or changeth, ỹ his successor may entert And I trow the cause is for this, that the parson or Vicar that is seised &c. in right of the Church hath no right of the fee simple in the tenements, but the right of the fee simple abydeth to another person: And for this cause his successor may well enter, notwithstãding such alienation &c. for a Bishop may haue a writ of right of tenements of right of his bishopricke, for this, that the right of fee simple abideth in him & in his chapter. And a Dean may haue a writ of right &c. for this that the right abideth in him & in his Chapter. And an Abbot may haue a writ of right, for this that the right abideth in him, & in his Court, & sic de alijs casib' consimilib' &c. but a parson or a vicar may not haue a writ of right &c. but the highest writ ỹ they may haue is a writ de Iuris vtrũ, ỹ which is a great proofe, that the right of fee simple is in abeiance, ỹ is to say, all only in the remembrance, intendemẽt, & cõsideration of the law: for me seemeth that such a thing & such a right that is said in diuers bookes to be in abeiãce, is is much to say in latin, talis res, vel tale rectũ quæ vel qđ non est in homin' adtunc superstite, sed tantummodo est & consistit in consideratione & intelligẽtia legis &c. & quidã alij dixerũt talem rem, aut tale rectum fore in nubibus &c. But I suppose that they vnderstand these words in nubibus &c. as I haue said before.

Also, if a Parson of a Church die, now the frank-

franktenement of the glebe of the parsonage is in no man, during the time that the parsonage is void, but is in abeiance, that is to say, in cõsideration and intelligence of the Law, till an other be made Parson of the same Church, & immediatly when another is parson, the frãktenement in deed is to him as successor.

Also, some men peraduenture will argue & say, ỹ inasmuch that the Parson with thassent of the patron and ordinary, may graunt a rent charge out of the glebe of his parsonage in fee, & so charge the glebe of his parsonage perpetually, Ergo they haue fee simple, or a. or one of them hath fee simple at the least &c. so thus it may be answered, that it is a principle in law, that of euery land there is a fee simple in some man, or els the fee simple is in abeiãce &c. And another principle is, that euery land of fee simple may be charged with a rent charge in fee, by one way or by another &c. & when such rent is granted by the deed of the parson, the patrõ, & the ordinary in fee, none shall haue no preiudice nor losse by force of such graunt, but the grauntors in their liues, & the heire of the patron, & successor of the ordinary after their deceases, & after such charge if the parson dy, his successor may not come to the same Church to be parson of the same church by the law, but by presentment of the patron, and admission & institution of the ordinary &c. And for this cause it behoueth that the successor hold him content and agreed with that which his patron and ordi-

dꝛdinary lawfully haue done before. But the cause that such rent charge is gone, is for this, ỹ they which haue entries in the sayd church, that is to say, the Patron after the law temporall, and the Ordinary after the law spirituall, were assented as parties vnto such a charge &c. & this saueth the verie cause that such glebe may bee charged in perpetuity &c. See Stat. 13. Eliz. cap. 20.

Also, if a bishop alien lands which bin parcell of his Bishopricke, and dieth, this is a discontinuance to his successor, for this, that hee may not enter, but is put to his writ de Ingressu sine assensu capituli &c. See stat. 1. Eliz.

Also, if a Deane alien land, parcell of his Deanry, and dieth, his successor may not enter, but he may haue a writ de Ingressu sine assensu capituli &c. See Stat. 13. Eliz cap. 10.

But if the Deane & the Chapter haue land to them and to their successors in common &c. Howbeit that the Deane alien such lands, his successors may well enter, for this, that the franketenement at the time of the alienation, was aswell in the Chapter, as in the Deane. But where the Deane is sole seised as in right of his Deanry, then such alienation is discontinuance to his successor, as it is aforesaid.

Also, some men will argue & say, that if an Abbot & his Couent be seised in their demeanas of fee, of certain land to them & to their successors &c & the Abbot without assent of his Couent alieneth the same land vnto an other,

and

and dieth, this is a discontinuãce to his succes-
sors &c. by the same they will say, that where
a Deane & a Chapter is seised of certain land
to them & to their successors, if the Dean alien
the same lands &c. this shalbe a discontinuance
to his successors, so that his successor may not
enter &c. To this may be answered, that there
is a great diuersity betweẽ ỹ said 2. cases, for
when an Abbot & the Couent be seised &c. yet
if they be disseised, the Abbot shal haue assise in
his owyn name, without the naming of his co-
uent &c. And if a mã may or will sue a Pręcipe
qd reddat of the same lãds whẽ they be in the
hands of the Abbot & his Couent, it behoueth
that such an action bee sued against the Abbot
only without naming of the couẽt &c. for this,
that all they be dead persons in the Law, saue
only the Abbot that is soueraigne &c. and this
is because of the soueraigntie &c. for els he
should bee as the other Monkes of the Co-
uent &c. But the Deane & the Chapter be no
dead persons in the law &c. For each of them
may haue an action by himself in diuers cases,
and of such Lands or tenements which the
Deane and Chapiter haue in Common &c. if
they be disseised, that the Deane & the Chapi-
ter shal haue assise, & not the Deane alone, and
if another will haue an actiõ real of such lands
or tenements against the Dean &c. it behoueth
him to sue against the Deane and Chapter, &
not against the Deane alone &c. & so appea-
reth great diuersity betwæne these two cases.

Also,

Also, if the Master of an Hospital discontinue certaine land of his Hospital, his successor may not enter, but he is put vnto his writ De Ingressu sine assensu confratrum & sororum suarum. And all such writs doe plainly appeare in the Register &c.

¶Remitter.

REmitter is an auncient terme in the Law, and it is where a man hath two titles to Lands or tenements, that is to say, one of an elder title, and an other of a later title, and he commeth to the Land by the later title, yet the law adiudgeth him to be in by force of ẽ elder title, for this, that the elder title is the more sure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him sayd a Remitter, for this, that the Law shall admit him to be in the land by the elder title: as if the tenaunt in the taile discontinue the taile, & after he disseiseth the discontinuee, & so dieth seised, whereby the tenements discend to his issue, or to his collin inheritable by force of the tayle: in this case this is to him to whom the tenemẽts discend which had right by force of the taile, a Remitter in the taile, for that, that the lawe shall put & adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entry vpon the disseisin in the Per against him, & recouer the tenements, and

his dammages, but insomuch that hee is in by force of the taile, the title and the interest of ỹ discontinuee is all vtterly adnulled and defeated &c.

Also, if tenant in the taile enfeoffe in fee his sonne or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenãt in the taile dieth, and he to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taple, to whom the feoffement is made: For howbeit that during the life of the tenant in the tail that made the feoffement, such heire shalbe adiudged in by force of the feffemẽt, yet after the death of the tenant in the tail, ỹ heire shalbe adiudged in by force of the taile &c, and not by force of the feoffement, and though that such an heire was of full age at the time of the death of the Tenant in the taile that made the feoffement, this maketh no matter, if the heire were within age at the time of the feoffement made to him. And if such an heire being within age at the time of the feffement commeth to full age, lyuing the tenant that made the feffement, & so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenant in the taile dyeth: Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the Land, then hee was at the time of the charge made,

made, insomuch that he is in his remitter by force of the taile, & so the estate that he had at the time of the charge is vtterly defeated &c.

Also a principal cause why such an heire in the cases aforesaid, and other cases semblable shall be said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himself he may not sue, & he may not sue against none other, for none other is tenant in the franke-tenement, and for that cause the law adiudgeth him in his Remitter, that is to say, in such plight, as he had lawfully recouered the same Land against another.

Also, if land be taile to a man and his wife, and to the heires of their two bodies engendred, the which haue issue a daughter, and the wife dieth, and the husband taketh an other, and hath issue an other daughter, and discontinueth the taile, and after he disseiseth the discontinuee, and so dyeth seised, now the Land descendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a Remitter but of the halfe, & as to the other halfe, shee is put to her action of Formedon against her Sister, for in this case the two sisters be not tenants in parcenary, but be tenants in common, for this that they be in by diuers titles, for the one sister is in her Remitter by force of the taile as to that that vnto her belongeth: And the other sister is in, as to that that belongeth to her, in fee simple by the

diſcent of her father. In the ſame maner it is if the tenant in the taile, infeoffe his heire apparant in the tayle, the heire being within age, & another Iointenant in fee, & the tenant in the tayle dyeth, now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedon &c.

Alſo, if a tenant in the taile infeoffe his heire apparant, the heire being at full age at the time of the feoffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his owne folly, that he being of full age would take ſuch feoffement &c. But ſuch folly may not bee adiudged in the heire being within age at the time of the feoffement &c.

Alſo, if a tenant in ỹ taile infeoffe a woman in fee, and dieth, & his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this that the husband & the wife be but one perſon in the law: And in that caſe the husband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhall be inconuenient, and for that the Law iudgeth the heire in his Remitter, for this, that no folly may bee arretted to him being within age at the time of the ſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for inſomuch that the husband & the wife be but one perſon, the land may not be ſeuered by halfes, and for ſuch cauſe the Husband is in his Remitter of

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the whole. But otherwise it is, if such an heire be of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certaine land in fée taketh an husband, the which alieneth the same Land to another in fée, and the Alienee letteth the same Land to the husband and the wife for terme of their two lines, saving the reuersion to the lessor & to his heires, in this case the wife is in her Remitter, and shée is seised in deed in her demesne as in Fée, as she was before, for this, that the taking of estate shalbe adiudged in the law the deed of the husband, and not the deed of the wife, so that no folly may be iudged in the wife that is couert in such case: And in this case the lessour hath nothing in the reuersion, for this that the wife is seised in Fée. But in this case, if the lessour will sue an action of waste against the husband and his wife, for this that the husband hath made waste, the husband may not barre the Lessour for to shew this, that the taking of estate made vnto him and to his wife, made a Remitter to his wife, for this that the husband is stopped to say this against his feoffement and owne reprisell of estate for terme of life to him and his wife, and yet the Lessour hath no reuersion, for this that the fée simple is in the wife. So a man may sée a matter in this case, that a man shall be stopped by a matter in deed, though no writing by deede indented,

or otherwise be thereof made. But if in an action of waſt the huſband make default at the graund diſtreſſe, and the wife prayeth to be receiued, and is receiued, ſhe ſhall well ſhew all the matter, and how ſhee is in her Remitter, and ſhall barre the leſſor of his action: For in euerie caſe that the wife is receiued for default of her huſband, ſhe ſhall plead and haue the ſame aduantage in pleading, as ſhee were a woman ſole. And howbeit that the Alienee made no leas to the huſband and his wife by deede indented, yet this is a Remitter to the wyfe, and though the alienee yelded the ſame L and to the huſband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this that the wife couert that taketh eſtate by fine ſhall not be examined by the Juſtices. And here note well, that when any thing ſhall paſſe from the wyfe that is couert of huſband by force of a fine, as the huſband & wife make conuſance of right to another, &c. or make a grant to yeld to an other, or releas by a fine to another, & ſic de ſimilibus, where the right of the wife paſſeth frō the wife by force of the ſame, the wife in all ſuch caſes ſhall be examined before that the fine be accepted. And ſuch fines conclude ſuch wiues couert for euer. But where nothing is moued in the fine, but all onely that the huſband & the wife take eſtate by force of the ſame fine, this ſhall not conclude the wife, for this that in ſuch caſe ſhe ſhall neuer be examined.

Alſo

Also, if tenant in the taile discontinue in the tayle, & hath a daughter, & dieth, & the daughter being of full age taketh an husband, & the discontinuee maketh a leas of this to the husband & his wife for terme of their lives this is a Remitter in deed to the wife, and the wife is in by force of the taile, Causa qua supra.

Also, if Land be given to the husband and his wife, to haue and to hold to them and to the heires of their two bodies begotten, and after the husband alieneth the land in fee, and taketh againe an estate to him & to his wife for term of their two lives. In this case, this is a Remitter in deed to the husband & the wife, manger the husband, for it may not be a Remitter to the wife, except it be a Remitter to the husband, for this that the husbād and his wife be but one person in the law, though that the husband is stopped to claime this to be a Remitter in him against his alienation, and his own reprisell, as is aforesaid.

Also, if land be given to a woman in the taile, the remainder to an other in the tayle, the remainder to the third in the tail, the remainder to the fourth in fee, & the wife taketh an husband, & the husband discontinueth the land of his wife, by this discōtinuance all the remainders be discōtinued, for if the wife dy without issue, they in ye remainder shal haue no remedy, but to sue their writs of Formedon in the remainder whē they come to their time &c. But if after such discontinuance, estate be made to

the Husband and his wyfe for terme of their two lines, or for terme of an other lyfe, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wyfe, that is in her Remitter, dyeth without issue, they in the Remainder may enter &c. without an action or suit &c. In the same maner it is of them which haue the reuersion after such tasle &c.

Also, if a man let a house to a woman for terme of her life, sauing the reuersion to the lessor, & after one sueth a faint and false action against the woman, and recouereth the house against her by default, so that the woman may haue against him a writ of Quod ei deforceat, after the Statute of Westminster the second chapter 4. now is the reuersion of the lessour discontinued, so that hee may not haue an action of Waste. But in this case, if the woman take an Husband, and hee that recouereth letteth the house to the husband and his wyfe for terme of their two lines, the wife is in her Remitter by force of the first Lease. And if the Husband and the wyfe make Waste, the first lessor shal haue against him a writ of waste, for this, that inasmuch that the wife is in her Remitter, hee is remitted to his reuersion. But it seemeth in this case, if he that here commeth by the false Action, will bring an other writ of Waste against the Husband and his wyfe, the Husband hath no remedie against him,

him, but to make default at the great distresse &c. and to cause the wife to be receiued & to plead the matter against the second lessor, and to shew that the action by which he recouered was false and fayned in the Lawe, and so the wife may barre &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wyfe, and a third man for terme of their liues, or in fee, this is a Remitter to the woman but as to the moity. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

Also, if the husband discontinue the land of his wife, and go ouer the Sea, & the discontinuee let the same land to the woman for term of lyfe, and deliuer to her seysin, and after the husband commeth and agreeth to that liuerie of seisin, this is a remitter to the woman, and yet if the woman had bene sole at the time of her Lease made to her, this should be to her no Remitter, but insomuch as shee was Couert baron, at the time of the Lease, and the liuerie of seisin made to her, though that she only take the Liuery of seisin, this was a Remitter to her, because a woman couert shall be abridged as an Infant within age in such case &c. Inquire in this case if the husband when he commeth againe will disagree to the leas and liuerie of seisin made to his wife in his absence, if this shall put the woman from her Remitter.

Also, if the Husband discontinue the tene-

ments

ments of his wife, and the discontinuee is disseised, and after the disseisor letteth the said tenements to the husband & his wife for terme of life, this is a Remitter to the wife: but if the husband and the wife were of couin or cõsent that the disseisin should be made, then it is no Remitter to the wife, because shee is a disseisoresse. But if the husband were of couin and consent to the disseisin, and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuee had made estate of freehold to the husband & the wife, by Indenture vpon condition, &c. reserving to the discontinuee a certaine rent, and for default of payment a reentrie, and because that the rent is behind, the discontinuee entreth, of this rent the woman shall haue Assise of Nouel disseisin, after the death of her husband against the discontinuee, because ꝑ the condition was wholy annulled, insomuch as the woman was in her remitter, yet the husband with his wife could not haue assise, because the husband is stopped.

Also, if the husband discontinue the Tenements of his wife, and taketh estate againe for terme of his life, the remainder after his decease to his wife for term of her life, in this case this is no Remitter to the wife during the lyfe of her husband, because that during the lyfe of the husband, the wife hath nothing in the freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a freehold in lawe is fallen vpon her mauger her will, & insomuch that she can haue no action against none other person, and against her selfe she can haue no action, therefore she is in her Remitter, for in this case though that ye woman enter not into the tenements, yet a stranger that hath cause to haue action, may sue his action against the woman of the same tenements, because she is tenaunt in Law, though she be not tenant in deed, for tenaunt of franktenement in deede is he, that if he be disseised of franktenement may haue Assise, but the tenant in the lawe before his entrie shall haue no Assise: & if a man seised in fee of certaine land hath issue a sonne which taketh a wife, and the father dieth seised, and after the sonne dieth before any entry made by him into the land, the wife of the sonne shal be endowed in the land, & yet he had no franktenement in deed, but he had a fee & a franktenement in law. And note well, that a Præcipe quod reddat may be aswel maintained against him that hath the franktenement in law, as against him that hath franktenement in deed.

Also, if a tenaunt in the taile haue issue two sonnes of full age, and he letteth the tayled Land to the elder sonne for terme of his life, the remainder to the yonger sonne for term of his life, and after the tenant in the taile dieth: In this case the elder son is not in his remitter, because he take estate of his father, but if the elder sonne die without issue of his bodie,

then

then this is a remitter of the ponger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, & there is none against whom he may sue his action &c. In the same maner it is where a man is disseised, and the disseisour dieth thereof seised, and the tenements discend to his heire, and the heire of the disseisor maketh a leas to a man of the said tenements for terme of life, the remainder to the disseisé for terme of lyfe, or in taile, or in fee, and the tenant for terme of life dyeth, now this is a Remitter to the disseisé &c. Causa qua supra.

Also, if a tenant in the taile infeoffe his son and an other of the tayled Land in fee, and liuerie of seisin is made to the other according to the deed, the Sonne not knowing thereof, nor agreeing to the Feoffement, and after hee that tooke the Liuerie of seysin dyeth, and the sonne occupieth not the Land, nor taketh any profit of the Land during the lyfe of his father, and after the father dieth, now this is a Remitter to the sonne, because the freehold is fallen vpon him by the survivor, and no default was in him, because he neuer agreed &c. in the lyfe of his father, and there is none against whō he may pursue his writ of Formedon &c. For if a man be disseised of certaine Land, and the disseisor maketh a deed of feoffement, whereof he infeoffeth B. C. and D. and the liuerie of seisin is made to B. and C. but D. was not at the Liuerie of seisin, nor neuer

agreed

agréed to the feoffement, nor neuer would take the profits &c. And after B. & C. die, and D. ouerlimeth them, and the disseisee bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, & how that he neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though he be tenant of the franktenement of the land: And yet the statute of Gloceſter will, that the disseisee shal recouer damage in a writ of Entre, grounded vpon the Nouel disseisin, against him that is found tenant. And this is a proofe in the other case, that insomuch as the issue in the tail commeth to the franktenement not by his deed, nor by his agréement, but after the death of his father, this is a Remitter to him, insomuch that he can sue an action of Formedon against none other person.

Also, if an Abbot alien the land of his house to another in fee, and the Alience by his deed chargeth the land with a rent charge in fee, & after the alienee infeoffeth the Abbot with licence, to haue and to hold to the Abbot and his succeſſours for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is succeſſor & his Couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an Action by his writ of Entre sine assensu Capituli of the same lands against none other person. In the same manner it is

where

where a Bishop, or Deane, or other such person &c. without assent &c. And after the Bishop taketh the state againe of the same land by licence to him, and to his successors, and after the Bishop dyeth, his successor is in his Remitter as in the right of his Church, and shal defeat the charge &c. Causa qua supra.

Also, if a man sue a false action against tenant in the tayle, as if a man would sue against him a writ of Entre in the Post, supposing by his writ that the Tenant in the taile had not his entrie but by A. of B. that disseised the graundfather of the demaundant, and that is false, and he recouereth against the tenant in the tayle by default, and sueth execution, and after the tenant in the tail dieth, his issue may haue a writ of Formedon against him that recouered: And if he will plead the recouery against the tenant in the tayle, the issue may say, that the sayd A. of B. disseised not the Graundfather of him that recouered in such manor, as his writ supposeth, and so he shall falsifie his recouerie. Also, suppose that that was true, that the said A. of B. disseised the graundfather of the demaundant that recouered, and that after the disseisin the demandant or his father, or his Graundfather, by a deed had released to the tenaunt in the tayle, all the right that he had in the land &c. And this notwithstanding he sueth his writ of Entre in the Post against the tenant in the tayle, in the manner as is aforesaid, and the tenant in the

taile

taple pleadeth to him, that the laid A. of B. diſſeiled not his Graundfather, as his writ ſuppoſeth: and vpon this they be at iſſue, and the iſſue is found for the demandant, whereby hee hath iudgement to recouer and ſueth execution, and after the Tenant in the taile dieth, his iſſue may haue a writ of Formedon againſt him that recouered. And if hee will plead the recouery by action tried againſt his Father tenant in the taile, then he may ſhew and plead the releaſe made to his Father, and ſo the action that was ſued was faint in the Law &c.

And it ſeemeth that faint action is as much to ſay in Engliſh, as fained action, that is to ſay, ſuch action, that though the wordes of his writ be true, yet for certaine cauſes hee hath no cauſe nor title by the law to recouer by the ſame Action. And falſe Action is where the wordes of the writ be falſe: And in the two caſes before ſayd, if the caſe were ſuch that after ſuch a recouerie and execution thereof made, the tenant in the taile had diſſeiled him that recouered, and thereof died ſeiſed, whereby the land alſo deſcended vnto his iſſue, this is a Remitter to the iſſue, and the iſſue is in by force of the taile: And for that cauſe I haue put theſe two caſes aforeſaide, to informe thee (my Sonne,) that the iſſue is the taple, by force of a diſcent made to him after a recouerie and execution thereof made againſt his auncester, may be aſwell in his Remitter,

as

as hee should by descent made to him after a discontinuance made by the auncestor of the tayled Land by feoffement in the countrey, or otherwise.

Also, in the same case aforesayd, if the case were such that after the demandant hath iudgment to recouer against the tenant in tail, and the same tenant in the taile died before any execution had against him, whereby the tenements discend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the taile, the issue shal plead the matter, as before is said, and so shall proue that the recouerie was false or faint in the law, and so shall barre him to haue execution of the iudgement &c.

Also, if the tenant in the tail discontinue the tayle and dye, and his issue bringeth a writ of Formedon against the discontinuee being tenant of the freehold of the land, & the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: In this case the iudgement shalbe, that the tenant goe without day, & after such iudgement, the issue in ꝑ taile that is demandant may wel enter in the land, notwithstanding the discõtinuance. And by such entry he shalbe adiudged in his Remitter, & the cause is, because that if any man sue a Præcipe qd' reddat against any tenant of freehold, in whith action the demandant shall not recouer damages, & the tenaunt pleadeth Nontenure, or otherwise disclaymeth

meth in the tenancy, the demaundant may not auerre in the writ, that he is tenant as ꝯ writ supposeth. And for that cause the demandant after that the iudgment is giuen, that the tenaunt shall goe without day, may enter into the tenements demaunded, the which shall be as great aduantage to him in the law, as if he had iudgement to recouer against the tenant. And by such entrie hee is in the Remitter by force of the taile: but where the demandant recouereth dammages against the tenant, there the demandant may auerre that hee is tenant as the writ supposeth, and that for the aduantage of the demandant for to recouer his damages, or els he shall not recouer his dammages, the which dammages be or were giuen him by the Law.

Also, if a man be disseised, and the disseisor dye, his heire being in by discent, now the entrie of the disseisee is taken away. And if the disseisee bring his writ of Entre vpon the disseisin in the Per against the heire, & the heire disclaimeth in the tenancy &c. the demandant may auerre his writ, that he is tenant as the writ supposeth, if hee will, for to recouer his damages. But yet if he will leaue the auerrement &c. he may lawfully enter into the land, because of the disclaimer, notwithstãding that his entrie before was taken away. And that was adiudged before my master Sir Robert Danby, late chiefe Iustice of the Common place, & his Companions, 5. E. 4. fol. 1. & 45.

Also, where the entry of a man is lawfull, though that hee take estate to him when he is of full age for terme of life, or in taile, or in fee, this is a Remitter to him, if such taking of estate bee not by deed indented, or by matter of record that shall conclude or stop him: For if a man be disseised, and thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisee.

Also, if a man let land for terme of life to an other, which alieneth to another in fee, & the alienor maketh estate to ꝑ lessor, this is a remitter to the lessor, because his entry was lawful.

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deed for terme of peres, whereby the Disseisee entreth, this entry is a Remitter to the disseisee: for in such case where the entrie of a man is lawfull, & a lease is made to him, though that he claime by words in the Countrey, that he hath estate by force of such Lease, or sayeth openly that hee claimeth nothing in the land, but by force of such leas, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a court of Record that hee hath estate but by force of such leas and not otherwise, then he is concluded &c.

Also, if two Jointenaunts seysed of certaine land in fee, the one being of full age, the other within age be disseised, and the disseisor dieth seised, and his issue entreth, the one of the joint-

iointenant being then within age, and after that he commeth to ful age, the heire of the disseisor letteth the land to the same iointenants for terme of their liues, this is a Remitter as to the halfe to him that was within age, because that he is seised of the moity that belongeth to him in fee, because his entry was lawfull. But the other iointenãt hath in the other halfe but estate for terme of life by force of the leas, because his entry was taken away &c.

Warranty.

IT is commonly said, that there be three maner of warranties, that is to say: warranty lineall, warranty collaterall, and warrantie that beginneth by disseisin. And it is to wit, that before the statute of Glouceſter, all warranties which discended to them which were heires to them that made the warranty, were barres to the same heires to demaund any lands or tenements against those warranties, except the warranties that began by disseisin, for such warrantie was neuer barre to the heire, because the warranty began by wrong, that is to say, by disseisin.

Warranty that beginneth by disseisin is in such forme: As where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of yeres, and the father by his deed thereof infeoffeth another in fee, and bindeth him and his heires to

warranty, & if the father die whereby the warranty discendeth to his sonne, this warrantie shall not barre the sonne, for notwithstanding this warranty, the sonne may well enter into the land, or haue an Assise against the alienee if he will, because the warranty began by disseisin: For whē the father that had no estate but for terme of yeres made a feoffement in fee, this was a disseisin to the son of the franktenemēt that then was in the son. In the same maner it is, if the sonne let vnto the father the land to hold at will, & after ꝑ father maketh a feoffemēt with warrāty &c. And as it is said of ꝑ father, so it may be said of euery other auncestor &c.

In the same maner it is if tenant by Elegit, tenant by statute marchant, or tenant by statute staple, maketh a feoffement in fee with warranty &c. this shall not bar the heire that ought to haue the land, because that such warranties begin by disseisin.

Also, if a warden in chiualry, or warden in socage, make a feoffement in fee, in fee tail, or for terme of life with warrāty &c. such warrāties be no bars to the heires to whom the land shal discend, because that they begin by disseisin.

Also, if the father & the sonne purchase certaine lands or tenements, to haue & to hold to them iointly &c. and after the father alieneth the whole to another, and bindeth him and his heires to warranty &c. and after the father dieth, this warranty shall not barre the sonne of the moity that belongeth vnto him of the same tene-

tenement, because ỹ as to the moity that belonged to ỹ son, the warranty began by disseisin.

Also, if A. of B. be seised of a mease, and F. of G. that hath no right to enter in the same meale, claiming to hold the same meale to him & to his heires, enter into the same meale, but A. of B. then is continually dwelling in the same meale, in this case the possession of the frankftenement shalbe alway abiudged in A. of B. & not in F. of G. because that in such case where two be in one meale, or in other tenements, & the one claimeth by one title, and the other by another title, ỹ law shall abiudge him in possessiō that hath right to haue the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffement to certain barretors & extortioners in the countrey for to haue maintenance of them of the same meale, by a deed of feoffement with warranty, by force of which the sayd A. of B. dare not dwell in the same meale, but goeth out of the same mese, this warrãty beginneth by disseisin, because ỹ such a feffement was cause that the said A. of B. left ỹ possession of the same meale.

Also, if a man that hath no right to enter in an others tenements, enter into the sayd tenements, and incontinently maketh a Feoffement to other persons by his deed with warranty, and delivereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is Law, ye

may se it in a plee Anno 31. Edwardi tertij in a writ of Formedon in the reuersion, Garr' Fitzh. 28.

Warranty lineall, is where a man seised of certaine lands in fee, maketh a feoffement by his deed to an other, and bindeth him and his heires to warranty, and hath issue & dieth, and the warranty discendeth to his issue, this is a lineall warranty: And the cause why this is a lineall warranty, is not because that ỹ warranty discendeth from the father to his heire, but the cause is, because that if no such deed with warranty had ben made by the father, then the right of the tenements should discend to the heire, and the heire should conuey the discent from the father &c. For if there be Father and sonne, and the sonne purchase Tenements in fee, and the father disseiseth the sonne therof, and alieneth it to another in fee by his deed, and by the same deed bindeth him and his heires to warrant the same tenements and so forth, and the father dieth, now is the son barred to haue the said tenements, for he may by no suit, nor by any other meanes haue the sayd tenements, because of the said warranty: And that is a collateral warranty, & yet the warranty discendeth lineally from the father to ỹ son. But because ỹ if no such deed with warranty had ben made, the sonne in no maner might conuey the title that he hath of the tenements frō his father to him, insomuch that his father had no estate nor right in the tenements, ther-

fore

fore such warranty is called collaterall warranty: Insomuch that he that made the warranty is collaterall to ỹ title of the tenements, and that is as much to say, that he to whom ỹ warrãty discended, could not convey the title that he had in the tenements by him that made the warranty in [illegible]is case, if no such warranty had bene made.

Also, if there be Graundfather, Father, and sonne, & the graundfather is disseised, in whose possession the father releaseth by his deed with warranty &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had bin made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the grandfather, but by meanes of the father &c.

Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deed with warrantie &c. and dieth without issue, and after this the Father dieth, this is a lineall warranty to the ponger sonne, because that though the elder sonne died in the lyfe of the father, yet by possibilitie it might bee, that hee might conuey to him the title of the land by his elder brother, if no such warranty had been made: For it might be that after the death of the Father, the elder brother entred into the tenements and dyed without issue, and then the ponger sonne shall conuey

to him the title of his elder brother. But in this case, if the ponger son releas with warranty to the disseisor, and dieth without issue, this is a collateral warranty to the eldest sonne, because that of such land as was to ỹ other, the elder brother by no possibility might convey to him the title by means of the ponger brother.

Also, if the tenant in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deed to the discontinuee, and bind him & his heires to warrantize &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder sonne barred to haue any reconerte by a writ of Formedon, because that the warranty of the middle brother is collateral to him, inso much that he may by no maner convey to him by force of the taile, any discent by the middle brother, and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the ponger brother may well haue a Formedon in the discender, & recouer the same land, because that the warrantie of the middle brother is lineall to the ponger brother, because it may be, that by possibilitie the middle brother may be seised by force of the tayle after the death of his elder brother, and then the ponger brother may convey his title of discent by the middle brother &c.

Also, if the tenant in the tail discontinue the tayle, & hath issue and die, and the vncle of the issue releas to the discontinuee with warranty and

and by without iſſue, this is a collateral warranty to the iſſue in the tayle, becauſe that the warrantie deſcendeth vpon the iſſue, which cannot conuey himſelfe to the tayle, by meane of his Vncle.

Alſo, if the tenant in the taile hath iſſue two daughters and die, and the elder daughter entreth into the whole, & thereof make a feoffement in fee with warranty, and after the elder daughter dieth without iſſue: In this caſe the yonger daughter is barred, as to the moytie, and as to the other halfe ſhe is not barred, for as to the moytie that belongeth to the yonger daughter, ſhe is barred, becauſe that as to the moitie that belongeth to her, ſhee cannot conuey by diſcent by the meanes of her elder ſiſter: And therefore as to the moitie, this is collateral warranty, but as to the other moity which belongeth to her elder ſiſter, by the ſame elder ſiſter the warrantie is no barre to the yonger ſiſter, becauſe that ſhee may conuey her deſcent as to that moitie that belongeth to her elder, by the ſame elder ſiſter: And ſo as to that moitie that belongeth to the elder ſiſter, the warranty as to that is lineall to the yonger ſiſter.

And note well, that as to him that demaundeth fee ſimple by any of his anceſters, he ſhall be barred by lineall warranty which diſcendeth vpon him, except he be reſtrained by ſome ſtatute, but he which demandeth fee taile by a writ of Formedon in the diſcender, ſhall not be barred by lineall warrantie, except he

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haue enough by deſcent in Fée ſimple by the ſame auncetter that made the warranty, but a collateral warranty is a barre to him that demaundeth fée, and alſo to him that demandeth fée tayle, without any other diſcent of fée ſimple, except in caſes that be reſtrained by the ſtatute, and other caſes for certaine cauſes as ſhall be ſaid hereafter.

Alſo, if land be giuen to a man and to his heires of his body begotten, the which taketh a wife, and hath iſſue a ſonne betweene them, and the huſband diſcontinueth the tail in fée, and dieth, and after the wife releaſeth to the diſcontinuée in fée with warranty and dieth, and the warranty diſcendeth to the ſonne, this is a collaterall warranty. But if tenements be giuen to the huſband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſonne, & the huſband diſcontinueth the tayle, and dyeth, & after the wife releaſeth with warranty & dieth, this warranty is but a lineall warranty to the ſon, for the ſonne ſhal not bée barred in this caſe to ſue his writ of Formdon, except he haue enough by diſcent in Fée ſimple by his mother, becauſe ẏ their iſſue in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warranty of the father, and the warranty of the mother, be but as lineal warranties to the heire &c. And note wel, & in euery caſe where a man demã-

deth

deth tenements in fée taile by a writ of Formedon, if any of the issues in the taile that had possession, or that hath possessiō, make a warranty &c. if he that sueth the writ of Formedon might by any possibilitie by matter that might be in deed, conney to him, by him that made the warranty by the forme of the gift: This is a lineall warranty, and not collaterall.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to hold to him and to the heires of his body begotten, and for default of such issue, the remainder to the middle sonne, to him, and to the heires of his body begotten, and for default of such issue, the remainder to the yongest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in fée, and bind him, and his heires to warrantie, and die without issue, this is a collaterall warranty to the middle sonne, and he shall be barred to demaund the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne, had the same land by force of the remainder, because that his eldest brother made no discontinuance, but dieth without issue of his body, and after the middle sonne maketh a discontinuance with warranty &c. & dieth without issue, this is a collaterall warranty to the

yongest

ponger ſonne, and alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the father that made the gift releaſe to the Diſſeiſour all his right &c. with warrantie, this is a collaterall warrantie to the ſonne vpon whom the warranty diſcended, Cauſa qua ſupra. And ſo note well, that where a man that is collaterall to the title &c. releaſeth with warranty, this is a collaterall warranty.

Alſo, if the father giue Land to his elder ſonne, to haue and to hold to him and to his heires males of his body begotten, the remainder to the ſecond ſonne &c. if the eldeſt brother alien in fee with warranty &c. and hath iſſue female & dieth without iſſue male, this is not a collateral warranty to the ſecond ſonne, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warrantie diſcendeth to the daughter of the eldeſt ſonne, and not to the ſecond ſonne. For euerie warrantie that diſcendeth, diſcendeth to him that is heire vnto him which made the warrantie by the common Law &c.

Alſo, if Land be giuen to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder thereof to his heires females of his body begotten, and after the doner in the taile maketh a feoffement in fee with warranty according, and hath iſſue a ſonne and a daughter and dieth, this warranty is but a lineall warranty to the ſonne, to demaund by writ of Formedon in the diſcender,

cender. And it is but lineall to the daughter to demaund the same land by writ of Formedon in the remainder, if her brother die without heire male, because that she claimeth as heire female of the body of her father begotten. But in this case, if her brother in his life release to the discontinuee with warranty &c. and after die without issue, this is a collaterall warrantie to the daughter, because that she cannot convey to her the right that she had by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collaterall &c.

Also, I have heard say, that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhil, that had issue diuers sonnes: and his intent was, that his eldest sonne should haue certaine lands to him and to his heires of his body begotten, and for default of issue, the remainder to his second sonne, and so forth, and so the third sonne &c. And because that he would that none of his sonnes should alien or make warrantie for to barre or to hurt the other that should be in the remainder &c. He caused to be made an Indenture to such effect, that is to say, that the Lands and tenements were giuen to his eldest Sonne vpon this condition, that if the eldest sonne aliened in fee, or in fee taile &c. or any of his sons aliened &c. that then their estate should cease & should be

void,

void, and that then the said Lands or Tenements immediately should remaine to the second sonne, and to the heires of his body begotten, and that vpon the same condition, that is to say, if the second sonne alien &c. that then his estate should cease, and that then the same lands & tenements should remaine to the third sonne, and to the heires of his body begotten &c. the remainder to other of his sonnes, and liuery of seisin was made according. But if seemeth by reason that all such remainders in the forme beforesaid be void, and of no value, and that for three causes. One cause is, because euery Remainder that beginneth by a deed, it behoueth that the remainder be in him to whom y remainder is tailed by force of the same deed when the liuery of seisin is made to him that hath the frank tenement. And such Remainder was not to the second sonne at the time of Liuerie of seisin in case before said &c.

The second cause is, if the first Sonne alien the tenements in fee, then is the frank tenement and the fee simple in the alienee and in none other, and if the donour had any reuersion, by such alienation the reuersion is discontinued, then how by any reason may it bee that such remainder shall begin his being and his growing immediatly after such alienation made to a straunger, that hath by the same alienation Frank tenement, and Fee simple, and also if such remainder should

be

bee good, then might he enter vpon the alienee where he had no maner of right before the alienation, ẅ should be inconuenient. The third cause is, when the condition is such, that if the eldest son alien &c. that his estate shall cease, or shall be void &c. then after such alienation &c. may the donor enter by force of such condition &c. as it seemeth, and so the donor or his heires in such case ought more soner to haue ẽ land, then the second sonne that hath no right before such alienation &c. and so it seemeth that such remainders in the case aforesaid be void.

Also, at the common law before the statute of Glouceſter, if the tenant by curteſie had alienen in fee with warrantie according, after his decease this was a bar to the heire &c. as it appeareth by the wordes of the same statute: But it is remedied by the same statute that the warranty of the tenant by the curteſie shall bee no barre to the heire, except hee haue enough by deſcent by the tenaunt by the curteſie, for before the said estatute that was a collateral warrantie to the heire, because hee could not conuey any title of diſcent to the tenements by the tenant by the curteſie, but only by his mother or other of his auncestors &c. and that is the cause why it was collateral warrantie. But if a man enheritor, take a wife, which haue issue a sonne betweene them and the father dieth, & the sonne entreth into the land, and endoweth his mother, and after his mother alieneth that that she hath in her

dower

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dower to another in fee, with warranty accor-ding, and after dyeth, and the warrantie dis-cendeth to his sonne, now the sonne shall be barred to demaund the same land, because of the said warrantie, because that such collate-rall warranty of tenant in dower is not reme-died by any Statute. The same Law is where tenant for terme of life maketh an alienation with warranty &c. and dieth, and the warran-tie discendeth to him that had the reuersion, or the remainder &c. they shall be barred by such warranty &c.

Also, in the said case, if it so were that when the Tenant in Dower alieneth &c. the heire was within age, and also at that time that the warrantie discendeth vnto him, he was with-in age, in this case the heire may after enter vpon the Alienee, notwithstanding the war-ranty discendeth &c. because that no laches shal bee adiudged in the heire within age, that hee entred not vpon the Alienee in the lyfe of the tenant in Dower, but if the heire was with-in age at the time of the alienation, and after hee came to full age in the life of the tenant in Dower, and so being of full age, he entred not in the life of the tenaunt in Dower, and after the tenant in Dower dyeth, there peraduen-ture the heire shall be barred by such warran-tie, because it shall bee accounted his folly that hee being of full age, entred not in the lyfe of the Tenant in Dower &c.

Also, it is spoken in the end of the sayd Sta-

Estatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demaund the heritage or the marrpage of his mother by a writ of Entre that his father alened in the time of his mother, whereof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute, if the huſband of the wife alien the heritage or mariage of his wife in fee with warrantie &c. by his deed in the Countrey, this is cleere law, that this warranty ſhall not barre the heire, except he haue ynough by diſcent &c. But the doubt is, if that the huſband alien the heritage of his wife by fine leuied in the kings courts with warrantie &c. if this ſhall barre the heire without any diſcent in value &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my Maiſter Sir Rich. Newton late chiefe Iuſtice of the common place ſay once in the ſame place, that ſuch warranty that the baron maketh by fine leuyed in the Kings Court, ſhall bar the heire, though that he haue nothing by deſcent, becauſe the ſtatute ſaith, whereof no fine is leuied in the Kings court &c. And ſo by his opinion, this warrantie by fine &c. abideth yet a collaterall warrantie, as it was at the common law not remedied by the ſaid eſtatute, becauſe that the ſayd Eſtatute excepteth the

alienation by fine with warranty. And some other haue said & yet say the contrary, & this is their proofe, ꝑ as by the same chapter of the said estatute is ordayned, that the warranty of the Tenant by the curtesie shall not barre the heire, except he haue ynough by discent &c. though that the tenant by the curtesie leuie a fine of the same lands with warrantie &c. as strongly as he can, yet this warranty shall not bar the heire, except he haue assets or ynough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statute in such forme that a man that hath not but in the right of his wife, may by fine leuied by himselfe of the tenements that he hath but in the right of his wife with warranty &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenãt by the curtesie cannot do it. But they haue said, that the statute shall be vnderstood after this forme. that is to say, where the statute speaketh, whereof no fine is leuyed in the Kings Court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings Court, and that is whereof no fine of the husband and his wife is leuyed in the kings court, for at the time of the making of the said statute, euerie estate of Lands or tenements that any man or woman had that should descend to his heire, was fee simple without condition, or vpon condition in deed or in Lawe. And because that such fine then

might

might lawfully haue been leuyed by the husband and his wife, and that if the heires of the husband warrant &c. such warrantie shall barre the heire &c.

Also to they say, that this is the vnderstanding of the said statute, for if the husband and the wife made a Feoffement in fee by deede in the Countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre sur Cui in vita &c. notwithstanding the warrantie of the husband: Then if no such exception was made in the statute of the fine leuyed &c. that the heire should haue the writ of Entre &c. notwithstanding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied &c. be generall &c. that is to say, that the heire of the woman after her death of the husband & the wife, shall not be barred of action, if he demaund the heritage or the marriage of his mother by a writ of Entre, that his father altered in the time of his mother, & so it should be in that case of the statute, except such words were, that is to say, whereof no fine is leuied in the Kings Court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in the Kings court, the which is lawfully leuied in such case. For if the Iustices haue knowledge of a man that hath nothing but in the right of his wife, will leuie a fine in his name only, they will not, nor ought not to take such fine to be leuied by the

husband only, without naming the wise, therefore inquire of this matter.

Also, it is to wit, that in such words where the heire demaundeth the heritage or mariage of his mother, this word (Or) is a disiunctiue, & is as much to say, if the heire demaund the heritage of his mother, that is to be vnderstood, the tenements that his mother had in fee simple by discent, or by purchase, or if the heire demaund the mariage of his mother, that is to say, the Tenements that were giuen vnto his mother in frankmariage.

Also, where it is moued in diuers deedes these words in Laine, Ego & hæred'mei &c. warrantizabimus, & imperpetuũ defendemus, it is to see what effect hath that word Defendemus in such deedes: & it seemeth that it hath not the effect of warrantize, nor comprehendeth any clause of warrantize, for if it should be so that it taketh effect, or cause of warrantize, then it should be put in some fines leuied in the Kings Court. And a man neuer saw that this word Defendemus was in a fine, but only this word Warrantizabimus, by which it seemeth that this Verbe Warrantize maketh warrantie, and is the cause of warrantize, and none other word in our law.

Also, if Tenant in the taile be seised of tenements deuisable by testament after the custome &c. and the Tenant in the taile alieneth the Tenemẽts to his brother in fee, and hath Mile and dieth, and after his brother deuiseth

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by his testament ꝑ same tenements to another in fee, and bindeth him & his heires to warrantize &c. & dyeth without issue, it seemeth that this warranty shall not barre the issue in the taile, if he will sue his writ of Formedon, because that the warranty discended not to the issue in the taile, inasmuch as the uncle of the issue was not bound by force of the same warranty in his life: And the cause that he could not warrant the land in his life is, inasmuch that the writte could not take any execution or effect but after his decease, & inasmuch that the uncle in his life was not held to warrantize, such warrantize may not discend from him to the issue in the taile &c. for nothing may discend from the ancestor to his heire, but the same that was in the ancestor. Also a warrantie may not go after the nature of tenements by customs, but only after the form of ꝑ common law. For if tenant in taile be seised of tenements in borough English, where the custom is, that all tenements of the same Borough, ought to discend to the yongest son, & he discontinueth the taile with warranty &c. and hath issue two sons & dieth seised of other lands & tenements in the same borough in fee simple to the value and more of the tenements tailed &c. yet the yongest sonne shall have a Formedon of the tenements tayled, and shall not be barred by the warrantize of his Father though ynough to him discended in fee simple from the same father after the customs, for this that the warrantize

rantize discendeth vpon the elder brother that is in full life &c. and not vpon the yongest son. In the same maner it is of collateral warrantize made of such tenements where y warrantize discendeth to the elder son &c. this shall not barre the yonger son &c. In the same manner it is of tenements in the Shire of Kent, which is called Gauelkind, the which tenements be departible among the brethren &c. after the custome &c. if any such warranty be made by their auncestors, such warranty descendeth al only to the heire that is heire by the common law, & not to all the heires which are heires of such tenements after the custome &c.

Also, if tenant in the tayle haue issue two daughters by diuers venters, and dyeth, and the daughters enter, and a stranger disseiseth them of the same Tenements, and one of the daughters releaseth by her deed to the disseisor all her right, and bindeth her and her heires to warrantize, and dieth without issue, in this case the sister that survyueth may well enter & put out the disseisor of all the tenements, for this that such warrantize is no discontinuance, nor collateral warrantize to the sister that survyueth, for this that they be of halfe blood, and the one may not be heire to the other after the common Lawe. But otherwise it is where there be daughters of tenants in the tayle by one venter.

Also, if tenant in the tayle let tenements to an other for terme of life, the remainder to an other

other in fee, & the collateral auncester confirmeth the estate of the tenant for terme of life, and bindeth him and his heires to warrantize for terme of life of the tenant for terme of life & dyeth, and the tenant in the tayle hath issue & dyeth, now this issue is barred to aske the tenements by writ of Formedon during the life of the tenaunt for terme of lyfe, because of the collateral descent vpon the issue in the tayle. But after the decease of the tenant for terme of life, the issue shall haue a Formedon &c. And vpon this I haue heard a reason, that this case shall proue an other case: that is to say, If a man let his land to an other, to haue & to hold vnto him & to his heires for terme of an others life, and the lessour dieth, lyuing him to whose lyfe &c. and a stranger entreth into the land, that the heire of the lessee may put him out, for this that in the case next aforesaid, in so much that a man may bind him and his heires to warrant to the tenant for terme of life, all onely during the life of the tenaunt for terme of life, and the warrantize discendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheritance, but all onely for terme of an others life. By the same reason where tenements be let to a man, to haue and to hold to him and to his heires for term of anothers lyfe, if the father die, lyuing him to whose lyfe &c. his heire shall haue the tenements lyuing him to whose life &c. For they haue said, that if a man grant

an annuitie to an other, to haue and to take to him and to his heires for terme of an others lyfe, if the graunte die &c. that after his heire shall haue the annuitie during the lyfe of him to whose lyfe &c. Quære de ista materia &c.

But where such a Lease or grant is made to a man and his heires for terme of yeres, in this case the heire of the lessee & the grauntee shall neuer haue after the death of the lessee or the grauntee that that is so letten or granted, for this that it is a chattell reall, and all chatteis reals by the common law, shall come to the executors of the grauntee, or the lessee, and not to the heire &c.

Also in some cases it may be, that howbeit that a collateral warrantize be made in fee &c. yet such warrantize may be defeated and aniented. As the tenant in the taile discontinueth the tayle in fee, & the discontinuee is disseised, & the brother of the tenant in the taile releaseth by his deed to the disseisor al his right &c. with warrantize in fee, and dieth without issue, and the tenant in the tayle hath issue & dieth, now the issue is barred of his action by force of the collaterall warrantie descending vpon him: but if after this the discontinuee enter vpō the disseisour, then may the heire in the taile haue his action of Formedon &c. for this that the warrantie is aniented & defeated. For when the warrantize is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

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In the same maner it is if the discontinuee make a feoffement in fee reserving to him certain rent, & for default of payment a reentry &c. & a collaterall auncestor releaseth to the feoffee that hath estate upon condition &c. and dyeth without issue, though that the warranty descended upon the issue in the tayle, yet if after the rent be behind, & the discontinuee entreth into the land &c. then the issue in the tayle shall have his recoverie by a writ of Formedon, for this that the warranty collaterall is defeated. And so if any such collaterall warrantie bee pleaded against the issue in the tayle in his action of Formedon, he may shew the matter as is aforesayd, how the warrantie is defeated, and so he may well maintaine his action.

Also, if a tenant in the taile make a feoffement to his uncle, & after his uncle maketh a feoffement in fee with warrantize &c. to an other, & after the feoffee of the uncle enfeoffeth againe the uncle in fee, & after the uncle enfeoffeth a stranger in fee without warrantize, and dieth without issue, & the tenant in the taile will bring his writ of Formdon against the straunger that was the last feoffee, & that by the uncle, in this case the issue shall never be barred by the warrantie that was made by the uncle to the said first feoffee of his uncle, for this that the said warrantize was defeated & anulled, for this that the uncle tooke againe to him as great estate of his sayd first feoffee to whom the warrãtize was made, as the same feoffee had of him: And the cause

why

why the warranty is aniented in this cale, is this, that is to say, that if the warrantize were in his force, then the vncle shall warrant a fee simple vnto himselfe, that may not be, but if the feffee made eſtate to the vncle for term of life, or in fee taile, saying the reuerſion vnto him &c. Or that he made a gift in the tayle to the vncle, or a leale for term of life, the remainder ouer &c. In this the warranti e is not all vtterly aniented, but it is put in ſuſpence during the eſtate that the vncle had, for after this that the vncle is dead without iſſue, then he in the reuerſion, or he in the remainder ſhall bar the iſſue in the taile of his writ of Formdon by the collaterall warrantize in ſuch caſe &c. But otherwiſe it is where the vncle had as great eſtate in the land by the feffee to whom ꝯ warrantize was made as the feffee had of him &c.

Alſo, if the vncle after ſuch feffement made with warrantize, or a releaſe made by him with warrantize be attaint of felonie, or outlawed of felony ſuch collaterall warranty ſhal not barre nor greeue the iſſue in the tayle, for this that by the attainder of felonie, the bloud is corrupt betweene them &c.

Alſo, if tenant in the tayle be diſſeiſed, and after maketh a releaſe to the Diſſeiſour with warrantize in fee, and after the tenant in the taile is attaint or outlawed of felony, and hath iſſue and dyeth, in this caſe the iſſue in the taile may enter vpon the diſſeiſour: And the cauſe is for this, that nothing maketh diſ-

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continuance in this case but the warranty, & the warrantie may not descend to the issue in the taile, for this is that the blood is corrupt betweene him that made the warrantie and the issue in the taile, for the warrantie alwaye abideth at the common Law, & the common lawe is such, that when a man is outlawed, or attaint of felony, which outlawrie is an attainder in the Law, that the blood betweene him & his sonne, and all other which should be layd his heires is corrupt, so that nothing by descent may descend to any that may be his heire by the common Law: And the wife of such a man that is so attaint shall neuer be indowed in the tenements of her husband so attaint &c. And the cause is, because men should more eschue to do felony &c. But y issue in the taile, as to the tenements tailed, is not in such case barred, because he is inheritable by force of the statute, & not by the course of the common law. And therfore such attainder of his father, or his ancestor to the taile &c. shal not put him out of his right, that he should haue by force of the taile.

Also, if tenant in the taile infeoffe his Uncle, which infeoffeth an other with warranty &c. if after the feoffee by his deed release to the vncle all maner of warranties, or all maner of couenants reals, or all maner of demaunds, by such release the warrantie is extinct. And if the warrantie in such case bee pleaded against the heire in the tayle that bringeth his writ of Formedon to barre the heire of

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his action, if the heire haue and plead the said releale &c. he shall defeat the plaintiffe barre &c. and many other causes and matters there be wherby a man may defeat warranties.

And it is to wit, that in the same maner as collaterall warranty may be defeated by matter in deed, or in law, in the same maner may lineall warrantie be defeated &c. For if the heire in the tayle hauing a writ of Formedon, and a lineall warranty of his auncestor inherritable by force of the taile be pleaded against him saith that that alleth to him discended of fee simple by the same auncestor that made the warranty, if the heire that is demandant may auoun and defeate the warrantie, this sufficeth to him: for the discent of other tenements of fee simple make nothing to barre the heire without the warranty &c.

D. Ewens Wheelon

FINIS June 10. 1625.

¶Here beginneth the Table of this present Booke.

NOw I haue made for thée my Sonne three Bookes. The first is of Estates that men haue of lands or tenements, that is to say.

Of Tenant in fée simple.
Tenant in fee taile.
Tenant in the Taile after possibilitie of issue extinct.
Tenant by the Curtesie of England.
Tenant in Dower.
Tenant for terme of life.
Tenant for terme of yeres.
Tenant at will by the Common Law.
Tenant at will by the Custome of the manor.

¶The Second Booke.

¶ The second Booke is, of Homage.
Fealty.
Escuage.
Knights seruice.
Socage.
Frankalmoigne, or Free almes.
Homage auncestrell.
Grand Serieanty.
Petit Serieanty.
Tenure in Burgage.
Tenure in Villenage.
Of three maner of Rents, that is to say,
Rent seruice.

Rent

Rent charge, and
Rent seche.

And these two small Bookes haue I made for thee, for to vnderstand better certain chapters of the auncient bookes of Tenures.

¶ The Third Booke.

¶ The third Booke is, of Parceners.
Of Jointenants.
Tenants in common.
Estates of lands or tenements vpon Condition.
Descents that take away Entries.
Continuall claime.
Releases.
Confirmations.
Attournements.
Remitters.
Of Warranties, that is to say:
Warranty lineall.
Warranty collaterall, and
Warranty that beginneth by disseisin.

And now thou my Sonne, that I will not that thou beleeue, that all that that I haue said in the said Bookes is Lawe, for that will I not take vpon me, nor presume: But of those things that be not Lawe, inquire and learne of my wise Masters learned in the Lawe.

Notwithstanding, though that certaine things that be noted and specified in the said Bookes

Bookes be not Lawe, yet such thinges shall make the more apt and able to understand, and learne the Arguments and the reasons of the Lawe: For by the arguments and the reasons in the Lawe, a man may more sooner come to the certaintie, and to the knowledge of the Law.

Lex plus laudatur, quando ratione probatur.

FINIS.

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12/1/14